


भारत का राजपत्र
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सं. 28]	नई दिल्ली, जुलाई 3—जुलाई 9, 2016, शनिवार/आषाढ़ 12—आषाढ़ 18, 1938
No. 28]	NEW DELHI, JULY 3—JULY 9, 2016, SATURDAY/ASADHA 12—ASADHA 18, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)
नई दिल्ली, 21 जून, 2016

का.आ. 1350.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9 (2) के उप-खंड (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री वेनी थापर (जन्म तिथि: 11.01.1971) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ इंडिया के निदेशक मण्डल में सनदी लेखाकार (चार्टर्ड अकाउंटेंट) श्रेणी के अंतर्गत अंशकालिक गैर-सरकारी निदेशक नामित करती है।

[फा.सं. 6/41/2015-बीओ-I]

ज्ञानोत्तम राय, अवर सचिव

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the, 21st June, 2016

S.O. 1350.—In exercise of the powers conferred by sub-section 3 (g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates Ms. Veni Thapar (DoB: 11.01.1971) as Part-time Non-official Director under Chartered Accountant category on the Board of Directors of Bank of India for a period of three years, from the date of notification of her appointment or until further orders, whichever is earlier.

[F.No. 6/41/2015-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 21 जून, 2016

का.आ. 1351.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 9(2) के उप-खंड (ख) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एन. नित्यानंद (जन्म तिथि: 20.05.1955) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया के निदेशक मण्डल में सनदी लेखाकार (चार्टर्ड अकाउंटेंट) श्रेणी के अंतर्गत अंशकालिक गैर-सरकारी निदेशक नामित करती है।

[फा.सं. 6/43/2015-बीओ-I]

ज्ञानतोष रॉय, अवर सचिव

New Delhi, the, 21st June, 2016

S.O. 1351.—In exercise of the powers conferred by sub-section 3 (g) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominates Shri N. Nityananda (DoB: 20.05.1955) as Part-time Non-official Director under Chartered Accountant category on the Board of Directors of Central Bank of India for a period of three years, from the date of notification of his appointment or until further orders, whichever is earlier.

[F.No. 6/43/2015-BO-I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 22 जून, 2016

का.आ. 1352.—राष्ट्रीय कृषि और ग्रामीण विकास बैंक अधिनियम, 1981 (1981 का 61) की धारा 6 की उपधारा (1) के खण्ड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, निम्नलिखित व्यक्तियों को इस अधिसूचना के जारी होने की तारीख से तीन वर्ष की अवधि के लिए राष्ट्रीय कृषि और ग्रामीण विकास बैंक (नाबार्ड) के निदेशक मण्डल में निदेशक नियुक्त करती है:-

- (i) सचिव,
कृषि, पशुपालन एवं सहकारिता विभाग,
झारखंड सरकार,
रांची, झारखंड।
- (ii) अपर मुख्य सचिव एवं कृषि उत्पाद आयुक्त,
मध्य प्रदेश सरकार,
वल्लभ भवन, भोपाल-462004
मध्य प्रदेश।

[फा.सं. 7/1/2016-बीओ-I]

ज्ञानोतोष रॉय, अवर सचिव

New Delhi, the 22nd June, 2016

S.O. 1352.—In exercise of the powers conferred by clause (e) of sub-section (1) of Section 6 of the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981), the Central Government hereby appoints the following persons to be the Directors on the Board of Directors of National Bank for Agriculture and Rural Development (NABARD) for a period of three years with effect from the date of issue of this notification:-

- i) Secretary
Agricultural, Animal Husbandry & Co-operative Department
Government of Jharkhand
Ranchi, Jharkhand
- ii) Additional Chief Secretary
and Agriculture Production Commissioner
Government of Madhya Pradesh
Vallabh Bhavan, Bhopal- 462004
Madhya Pradesh

[F.No. 7/1/2016-BO-I]

JNANATOSH ROY, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 27 जून, 2016

का.आ. 1353.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, रियाद में श्री रवि रंजन पंडित, सहायक अनुभाग अधिकारी और श्री सुप्तम दास, सहायक अनुभाग अधिकारी को दिनांक 27 जून, 2016 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2016]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 27th June, 2016

S.O. 1353.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints (1) Shri Ravi Ranjan

Pandit, Assistant Section Officer and (2) Shri Suptam Das, Assistant Section Officer as Assistant Consular Officer in the Embassy of India, Riyadh to perform the Consular services with effect from 27 June, 2016.

[No. T-4330/01/2016]

PRAKASH CHAND, Dy. Secy. (Consular)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 30 जून, 2016

का.आ. 1354.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पाद की मुहरांकन शुल्क अधिसूचित करता है :-

अनुसूची

भारतीय मानक सं.	भाग	अनुभाग	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क (रु.)		इकाई दर स्लैब 1 (रु.)	स्लैब में इकाईयां	शेष	प्रचालन तिथि
						वृहद स्तर	एमएसएमई के लिए				
5631	—	—	1970	ट्राली उपकरणों सादा और घुमावदार	1 पीस	46000 /—	37000 /—	2.3	सभी	—	29.06.2016
7083	—	—	1973	ट्राली, दवा	1 पीस	46000 /—	37000 /—	2.4	सभी	—	29.06.2016

[संदर्भ : सी एम डी-3/8 : 8]

सी. के. महेश्वरी, वैज्ञानिक 'जी' एवं उपमहानिदेशक (प्रमाणन)

MINISTRY OF CONSUMERS AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumers Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 30th June, 2016

S.O. 1354.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the product given in the Schedule :—

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee (Rs.)		Unit Rate Slab-1 Fee (Rs.)	Units in Slab-1	Rema-ning	Effective Date
						Large Scale	MSME				
5631	-	-	1970	Trolley, Instrument, Plain & Curved	1 piece	46000/-	37000/-	2.3	All	-	29.06.2016
7083	-	-	1973	Trolley, Medicine	1 piece	46000/-	37000/-	2.4	All	-	29.06.2016

[Ref. : CMD-3/8 : 8]

C. K. MAHESHWARI, Scientist 'G' & DDG (Certification)

नई दिल्ली, 4 जुलाई, 2016

का.आ. 1355.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 6 के उपविनियम (3) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा नीचे अनुसूची में दिए गए उत्पाद की मुहरांकन शुल्क अधिसूचित करता है :-

अनुसूची

भारतीय मानक सं.	भाग	अनुभाग	वर्ष	उत्पाद	इकाई	न्यूनतम मुहरांकन शुल्क (रु.)		इकाई दर स्लैब 1 (रु.)	स्लैब में इकाईयां	शेष	प्रचालन तिथि
						वृहद स्तर	एमएसएमई के लिए				
15997	—	—	2012	बर्तनों एवं रसोईघर साधित्रों के लिए अल्प निकल ऑस्टेनिटीक स्टेनलेस स्टील की चादर एवं पती — विषिष्टि	एक मै. टन	90000	72000	240	सभी	—	04.07.2016
3074	—	—	2013	मोटर वाहन हेतु, इस्पात नलिकाएं — विषिष्टि (तीसरा पुनरीक्षण)	एक टन	70000	56000	8.7	सभी	—	04.07.2016
2507	—	—	1975	स्प्रिंग्स के लिए कोल्ड-रोल्ड स्टील सिट्रप्स की विषिष्टि (पहला पुनरीक्षण)	एक टन	63000	51000	7	सभी	—	04.07.2016
2039	1-3	—	1991	सड़किल और साइकिल रिक्वा के लिए इस्पात नलिकाओं की विषिष्टि (दूसरा पुनरीक्षण)	एक टन	74000	60000	12.35	सभी	—	04.07.2016

[संदर्भ सी एम डी-2/16 : 15997, 3074, 2507, 2039 (भाग 1-3)]

सी. के. महेश्वरी, वैज्ञानिक 'जी' एवं उपमहानिदेशक (प्रमाणन)

New Delhi, the 4th July, 2016

S.O. 1355.—In pursuance of sub-regulation (3) of the regulation 6 of the Bureau of Indian Standards (Certification) Regulations 1988, the Bureau of Indian Standards, hereby notifies the Marking fee for the product given in the Schedule :

SCHEDULE

IS No.	Part	Sec	Year	Product	Units	Minimum Marking Fee (Rs.)		Unit Rate Slab-1 Fee (Rs.)	Units in Slab-1	Rema-ning	Effective Date
						Large Scale	MSME				
15997	-	-	2012	Low Nickel Austenitic Stainless Steel Sheet and Strip for Utensils and Kitchen Appliances — Specification	One MT	90000	72000	240	All	-	04.07.2016
3074	-	-	2013	Steel Tubes for Automotive Purposes — Specification (Third Revision)	One Tonne	70000	56000	8.7	All	-	04.07.2016
2507	-	-	1975	Specification for Cold-Rolled Steel Strips for Springs (First Revision)	One Tonne	63000	51000	7	All	-	04.07.2016
2039	1-3	-	1991	Steel Tubes for Bicycle and Cycle Rickshaws — Specification (Second Revision)	One Tonne	74000	60000	12.35	All	-	04.07.2016

[Ref. CMD-2/16 : 15997, 3074, 2507, 2039 (Pt. 1-3)]

C. K. MAHESHWARI, Scientist 'G' & DDG (Certification)

स्वास्थ्य एवं परिवार कल्याण मंत्रालय**(स्वास्थ्य एवं परिवार कल्याण विभाग)**

नई दिल्ली, 28 जून, 2016

का.आ. 1356.—जबकि भारतीय आयुर्विज्ञान परिषद (संशोधन) अध्यादेश, 2013 की धारा 3क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 6 नवंबर, 2013 को भारतीय आयुर्विज्ञान परिषद का पुनर्गठन किया गया था।

और जबकि भारतीय आयुर्विज्ञान अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1)(क) के प्रावधान के अनुसरण में 06.11.2013 से गोवा सरकार के प्रतिनिधि के रूप में डॉ. वी.एन. जिंदल को भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप में नामित किया गया था।

और जबकि गोवा सरकार ने सूचना दी है कि आईएमसी अधिनियम, 1956 की धारा 3 (1)(क) के तहत गोवा सरकार के प्रतिनिधि डॉ. वी.एन. जिंदल, गोवा मेडिकल कॉलेज के डीन के पद से सेवानिवृत्त हो गए हैं और वी.एन. जिंदल के सेवानिवृत्त होने के परिणामस्वरूप डॉ. प्रदीप जी. नायक को गोवा मेडिकल कॉलेज का डीन नियुक्त किया गया है।

इसलिए डॉ. वी.एन. जिंदल जो गोवा सरकार का प्रतिनिधित्व कर रहे थे, अब आईएमसी अधिनियम, 1956 की धारा 3 (1)(क) के तहत भारतीय आयुर्विज्ञान परिषद के सदस्य नहीं रहे हैं।

अब इसलिए, गोवा सरकार के प्रतिनिधि डॉ. वी.एन. जिंदल को तत्काल प्रभाव से भारतीय आयुर्विज्ञान परिषद का सदस्य न होना माना जाएगा।

[सं. वी-11013/02/2015-एमईपी]

अमित बिस्वास, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 28th June, 2016

S.O. 1356.—Whereas on 6th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And whereas in pursuance of the provision of sub-section (1)(a) of Section 3 of the Indian Medical Act, 1956 (102 of 1956) Dr. V.N. Jindal was nominated as a member of the Medical Council of India representing Government of Goa with effect from 06-11-2013;

And whereas the Government of Goa has informed that Dr. V.N. Jindal, representing Government of Goa under section 3(1)(a) of IMC Act, 1956 has retired from the post of Dean, Goa Medical College and consequent upon retirement of Dr. V.N. Jindal, Dr. Pradeep G. Naik has been appointed as Dean, Goa Medical College. Therefore Dr. V.N. Jindal has ceased to be a member of Medical Council of India representing Govt. of Goa under section 3(1)(a) of IMC Act, 1956.

Now therefore, Dr. V.N. Jindal shall be deemed to have ceased to be a member of the Medical Council of India representing Government of Goa with immediate effect.

[No. V-11013/02/2015-MEP]

AMIT BISWAS, Under Secy.

नई दिल्ली, 28 जून, 2016

का.आ. 1357.—जबकि भारतीय आयुर्विज्ञान परिषद (संशोधन) अध्यादेश, 2013 की धारा 3क की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 6 नवंबर, 2013 को भारतीय आयुर्विज्ञान परिषद का पुनर्गठन किया गया था।

और जबकि भारतीय आयुर्विज्ञान अधिनियम, 1956 (1956 का 102) की धारा 3 की उप-धारा (1)(क) के प्रावधान के अनुसरण में 06.11.2013 से गोवा विश्वविद्यालय के प्रतिनिधि के रूप में डॉ. सिलवानो सी.ए. डियास सैपेको को भारतीय आयुर्विज्ञान परिषद के सदस्य के रूप में नामित किया गया था।

और जबकि गोवा विश्वविद्यालय ने सूचना दी है कि आईएमसी अधिनियम, 1956 की धारा 3 (1)(ख) के तहत गोवा विश्वविद्यालय के प्रतिनिधि डॉ. सिलवानो सी.ए. डियास सैपेको, गोवा मेडिकल कॉलेज से सेवानिवृत्त हो गए हैं तथा उन्हें गोवा विश्वविद्यालय के संकाय पद पर न होना माना जाए। इसलिए, डॉ. सिलवानो सी.ए. डियास सैपेको आईएमसी अधिनियम, 1956 की धारा 7(3) में निहित प्रावधानों के अनुसार आईएमसी अधिनियम, 1956 की धारा 3 (1)(ख) के तहत गोवा विश्वविद्यालय के प्रतिनिधि के रूप में भारतीय आयुर्विज्ञान परिषद के सदस्य नहीं रहे हैं।

अब इसलिए, गोवा विश्वविद्यालय के प्रतिनिधि डॉ. सिलवानो सी.ए. डियास सैपेको को तत्काल प्रभाव से भारतीय आयुर्विज्ञान परिषद का सदस्य न होना माना जाएगा।

[सं. वी-11013/02/2015-एमईपी]

अमित बिस्वास, अवर सचिव

New Delhi, the 28th June, 2016

S.O. 1357.—Whereas on 6th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And whereas in pursuance of the provision of sub-section (1)(b) of Section 3 of the Indian Medical Act, 1956 (102 of 1956) Dr. Silvano C.A. Dias Sapeco was nominated as a member of the Medical Council of India representing Goa University with effect from 06-11-2013;

And whereas the Goa University has informed that Dr. Silvano C.A. Dias Sapeco, representing Goa University under section 3(1)(b) of IMC Act, 1956 has retired from Goa Medical College and ceases to be a medical faculty of the Goa University. Therefore, Dr. Silvano C.A. Dias Sapeco has ceased to be a member of Medical Council of India representing Goa University under section 3(1)(b) of IMC Act, 1956 as per the provisions contained in Section 7(3) of IMC Act, 1956.

Now, therefore, Dr. Silvano C.A. Dias Sapeco shall be deemed to have ceased to be a member of the Medical Council of India representing Goa University with immediate effect.

[No. V-11013/02/2015-MEP]

AMIT BISWAS, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 28 जून, 2016

का.आ. 1358.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जे एम बक्सी और कंपनी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, मुंबई के पंचाट (संदर्भ सं. 1/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-36011/04/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 28th June, 2016

S.O. 1358.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial Dispute between the management of J.M. Baxi and Company and their workmen, received by the Central Government on 27.06.2016.

[No. L-36011/04/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present :

JUSTICE S.P.MEHROTRA, Presiding Officer

REFERENCE NO.CGIT-1/1 OF 2015

Parties:

Employers in relation to the management of J.M.Baxi and Company

And

Their workman

Appearances:

For the first party/ Management : Mrs. P.S. Shetty, Adv.

Mr. Jaiprakash Sarang, Manager, Human Resources

For the second party /Union : Mr. Fransisco Rodrigues, General Secretary.
State : Maharashtra

Mumbai, dated the 25th day of February, 2016

AWARD – PART I

1. The present Reference has been made by the Central Government by its Order dated 2.1.2015 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said Order are as under:

“1. Whether the action of the management of M/s.JM Baxi and company, Vasco-da-Gama, Goa in unilaterally implementing the insurance Cover extending medical benefits for its employees/workmen through New India Insurance Company Ltd during the currency of the settlement (existing settlement not terminated though expired on 31st Dec 2011) in contravention of Section 19(2) of ID Act 1947 is justified, legal and proper? 2. Whether the action of the management of M/s J.M.Baxi and Company, Vasco-da-Gama, Goa in not reimbursing the medical claim of Rs.38,141.00 in respect of Shri Veressimo Fernandes, Foreman, in violation of clause of 10 of the memorandum of settlement dated 12.5.2011 is justified, legal and proper? 3. What relief Shri Veressimo Fernandes is entitled to?”

2. By the Order dated 27.1.2015, notices were directed to be issued to the parties fixing 27.3.2015.

3. On 27.3.2015, as noted in the Order passed on the said date, Mr.Jaiprakash Sarang, Manager, Human Resources was present for the first party/Management. However, none was present for the second party/Union despite service of notice. As the Presiding Officer was on tour on the said date, the case was adjourned to 22.5.2015 for filing Statement of Claim.

4. On 22.5.2015, as noted in the Order passed on the said date, none was present for either of the two sides. In the circumstances, the case was adjourned to 12.6.2015 for filing Statement of Claim.

5. On 12.6.2015, as noted in the Order passed on the said date, none was present for either of the two sides. In the circumstances, the case was adjourned to 14.9.2015 for filing Statement of Claim.

6. On 14.9.2015, as noted in the Order passed on the said date, Mr.Jaiprakash Sarang, stating himself to be Senior Manager, Human Resources was present for the first party/Management. However, none was present for the second party/Union. In the circumstances, the case was adjourned to 5.10.2015 for filing Statement of Claim.

7. On 5.10.2015, as noted in the Order passed on the said date, none was present for either of the parties. In the circumstances, the case was adjourned to 30.11.2015 for filing Statement of Claim.

8. On 30.11.2015, as noted in the Order passed on the said date, Mr.Jaiprakash Sarang, Manager, Human Resources, was present for the first party/Management. However, none was present for the second party/Union. Mr.Jaiprakash Sarang, prayed for adjournment of the case. The case was accordingly adjourned and fixed on 8.2.2016 for filing Statement of Claim.

9. On 8.2.2016, as noted in the Order passed on the said date, Mr.Jaiprakash Sarang, Manager, Human Resources was present for the first party/Management. However, none was present for the second party/Union. Vakalatnama of Mrs.P.S.Shetty, Advocate was filed on behalf of the first party/Management. As none was present for the second party/Union, the case was adjourned to 25.2.2016 for filing Statement of Claim.

10. Pursuant to the Order dated 8.2.2016, the case is put up today.

Mrs. P.S. Shetty, learned counsel for the first party/Management is present.

Mr. Jaiprakash Sarang, Manager, Human Resources is also present for the first party/Management.

Mr. Francisco Rodrigues, stating himself to be General Secretary of the second party/Union is present.

Mr. Veressimo Fernandes, Foreman mentioned in Item Nos. 2 and 3 of the Schedule to the Reference Order dated 2.1.2015, as quoted above, is present, and he is identified by Mr.Francisco Rodrigues, stating himself to be General Secretary of the second party/Union.

11. A perusal of the Schedule to the Reference Order dated 2.1.2015, shows that the same consists of two parts mentioned at Item No.1 and Item Nos.2 and 3 in the Schedule to the Reference Order.

12. Today, Consent Terms/Settlement dated 25.2.2016 have been filed on behalf of the parties in respect of Item Nos.2 and 3 mentioned in the Schedule to the Reference Order dated 2.1.2015 namely,

“2. Whether the action of the management of M/s J.M.Baxi and Company, Vasco-da-Gama, Goa in not reimbursing the medical claim of Rs.38,141.00 in respect of Shri Veressimo Fernandes, Foreman, in violation of clause of 10 of the memorandum of settlement dated 12.5.2011 is justified, legal and proper?”

“3. What relief Shri Veressimo Fernandes is entitled to?”

13. Consent Terms dated 25.2.2016 have been signed by Mr. Jaiprakash Sarang, Manager, Human Resources on behalf of the first party/Management and Mr.Francisco Rodrigues, General Secretary of the second party/Union on behalf of the second party/Union. Mrs.P.S.Shetty, learned counsel for the first party/Management has also signed the Consent Terms. Mr.Veressimo Fernandes, Foreman, mentioned in Item Nos. 2 and 3 of the Schedule to the Reference Order, has also signed the Consent Terms.

14. Mrs.P.S.Shetty, learned counsel for the first party/Management and Mr.Francisco Rodrigues, stating himself to be General Secretary of the second party/Union as well as Mr.Jaiprakash Sarang, Manager, Human Resources representing the first party/Management and Mr.Verassimo Fernandes, Foreman mentioned in Item Nos. 2 and 3 of the Schedule to the Reference Order dated 2.1.2015 state that Item Nos.2 and 3 in the Schedule to the Reference Order dated 2.1.2015 be decided in terms of the Consent Terms dated 25.2.,2016 filed today before the Tribunal.

15. In view of the averments made in the Consent Terms filed today and in view of the statements made before the Tribunal as mentioned above, Item Nos.2 and 3 of the Schedule to the Reference Order dated 2.1.2015, namely, “2. Whether the action of the management of M/s J.M.Baxi and Company, Vasco-da-Gama, Goa in not reimbursing the medical claim of Rs.38,141.00 in respect of Shri Veressimo Fernandes, Foreman, in violation of clause of 10 of the memorandum of settlement dated 12.5.2011 is justified, legal and proper? and “3. What relief Shri Veressimo Fernandes is entitled to” are decided in terms of the aforesaid Consent Terms / Settlement dated 25.2.2016.

16. Award Part-I is passed accordingly. The said Consent Terms / Settlement dated 25.2.2016 will form part of the present Award Part-I.

Justice S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1359.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 142/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/46/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1359.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 27.06.2016.

[No. L-12012/46/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 5th April, 2016

Reference: (CGITA) No. 142/2010

1. The Asst. General Manager,
Bank of Baroda,

Head Office,
Mandvi,
Baroda

...First Party

Vs.

Their Workman,
Shri Patel Pramodchandra Bailalbhai
Res. Jani Fliya,
At. Kavi, Taluka Jambusar,
Dist. Bharuch

...Second Party

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/46/2008-IR(B-II) dated 05.09.2008 referred the dispute for adjudication to the Industrial Tribunal, Baroda(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of Baroda, Bharuch in terminating the services of Shri Patel Pramodchandra Bhailalbhai w.e.f. 7.1.2004 is legal, just and proper? What relief the concerned workman is entitled to ?”

2. This reference dates back to 05.09.2008. Second party submitted statement of claim (Ext.5) on 21.01.2009. First party submitted written statement (Ext.11) on 30.09.2009. Since then the second party has not been responding and has also not led evidence.

3. It also noteworthy that on 09.12.2015, the learned counsel of the second party Shri Yogesh Patel was informed by me on his cell phone number 9825062469 regarding the reference. He promise me to respond on the next date for filing statement of claim on 05.04.2016 but to no result. Thus, it appears that second party is not willing to proceed with the reference as they have been absent since last several dates. Thus Tribunal has no option but to dismiss the reference in default of the second party.

This reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1360.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 560/2004) आईटीसी सं. 34/2003 को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/31/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1360.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 560/2004) ITC No. 34/2003 of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/31/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 1st April, 2016

Reference: (CGITA) No. 560/2004**Reference: (ITC) No. 34/2003**

1. The Dy. Chief Officer,
UCO Bank,
Zonal Office, UCO Bank Bhawan, Ashram Road,
Ahmedabad (Gujarat) ... First Party

Vs.

Their Workman,
Through the Secretary,
UCO Bank Nivruvt Parivar,
257, 2nd Floor, Ellis Bridge,
Opp. Town Hall,
Ellisbridge,
Ahmedabad (Gujarat) ... Second Party

For the First Party : Shri S. N. Mishra, Advocate

For the Second Party : Shri M.C. Modi, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/31/2003-IR(B-II) dated 19.04.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Chief office, Pension Cell, Uco Bank, Head Office, Kolkata and another in denying pension to Shri D.L Gohil, Daftari, Bhadra Branch, Ahmedabad on the plea of delayed submission of option of pension by workman, after diverting PF contribution to Pension Fund and not informing workman in time about invalidity option is justified and legal? If not, what relief the workman is entitled to?”

2. The second party has stated in his statement of claim (Ext.7) that he had been working as Daftari in Record Department of Bhadra Branch of the first party. He joined the service in the year 1978 and obtained benefits of V.R.S. Scheme in the year 2001. He worked approximately for 22 years. In the year 2001, the bank offered the Voluntary Retirement Scheme to its employees wherein the workmen were to get the pension whosoever were eligible at that point of time. In the year 1996, the workman who wanted to get benefit of the scheme had to fail the detailed prescribed form for the Voluntary Retirement Scheme as settled between the parties. As per the scheme, workmen would have to get the benefits of pension by filling the prescribed form within the stipulated period i.e. 25.01.1996 and same were to be accepted by the head office. The cut of date for claiming Voluntary Retirement Scheme was 25.01.1996 by which the prescribed form is to be submitted. He further alleged that he received a letter on 22.05.2001 from chief Officer, Pension stating that for grant of pension second party applied on 30.01.1996 i.e. after the stipulated period. Therefore, the benefit of the scheme cannot be granted

3. He has further alleged that denial of the scheme to him has caused huge loss. He was eligible for the said scheme and he has been denied the benefit of scheme wrongly. He served required notices and made a complaint in Central Labour Office, where no settlement arrived at and hence this reference. Therefore, he has prayed for award of benefit of voluntary Retirement Scheme and other ancillary benefits.

4. The First party in his written statement (Ext.19) submitted that the whole claim made in the statement of claim are misleading and without basis. He was given due information of the Uco Bank Employers Pension Regulation 1995 under which the second party were to exercise an option in writing within 120 days from the notified date to become a member of a pension fund and thus, the cut of date was 25.01.1996 but he exercised the option on 30.01.1996 beyond the stipulated date i.e. 25.01.1996. Thus, as per the scheme, second party was not entitled for the benefits of the scheme. Hence the reference has no force.

5. By the perusal of the pleading, following issues for decision arise:

- (i) Whether the second party was a workman?
- (ii) Whether the second party was entitled for the scheme of Voluntary Retirement?

6. **ISSUE NO. I:-** Whether the second party was a workman? - The burden to prove this issue lies on the second party. The second party D.L. Gohel has admitted in his statement on oath that he took voluntary retirement in the year 2001 and the reference has been made on 19.05.2003. Apex Court in Prem Sagar Vs. Standard Vacuum Oil Company, AIR 1965 SC 111 has held that when a person has retired or is forced to retire he cannot be said to be in employment and he is serious to be an employee or workman. Thus, this issue is decided in negative and against the second party.

7. **ISSUE NO. II:-** Whether the second party was entitled for the scheme of Voluntary Retirement? - The burden to prove this issue lies on the second party. Second party D.L. Gohel in his statement on oath has not denied that he applied for the voluntary retirement scheme on 30.01.1996. The documents (Ext.39) Uco Bank Employees Pension Regulation, 1995 clearly indicates that an employee of the bank has to apply for the benefit of the said scheme by 25.01.1996 and the form by which the second party applied for pension is Ext. 38 and notice (Ext.27) indicates that he has to apply by the date 25.01.1996 but he applied on 30.01.1996. As second party did not apply for the benefit of the scheme by the stipulated cut of date despite a sufficient notice. Hence, he cannot blame first party for his lapse in applying for the scheme. Thus, the reference has no force and deserved to be rejected.

This is the award of the Tribunal.

PRAMOD KUMAR CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1361.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 824/2004) आईटीसी सं. 36/2003 को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/132/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1361.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 824/2004) ITC No. 36/2003 of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 27.06.2016.

[No. L-12012/132/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th January, 2016

Reference: (CGITA) No. 824/2004

Reference: (ITC) No. 36/2003

1. The Chief Manager,
Bank of India,
Ellora Park, Subhanpura,
Baroda-390007

...First Party

Vs.

Their Workman
Sh. Ratilal C. Vasava,
3, Yogivan Society-2,
Waghodia Road,
Baroda

...Second Party

For the First Party : Kum. Meenaben Shah, Advocate
 For the Second Party : Sh. H.D. Kathrotia, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/132/2003-IR(B-II) dated 23.09.2003 referred the dispute for adjudication to the Industrial Tribunal, Baroda(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of India, Vadodara through the Chief Manager in terminating the services of Shri Ratilal C. Vasava by way of ‘dismissal without notice’ vide punishment order dated 24.08.2002 is legal, proper and justified? If not, what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

2. The second party has stated in his statement of claim (Ext.7) that he has been working as Cashier cum Account clerk with the Samlaya Branch, Ta-Savli, Dist.: Vadodara of Bank of India (First party) at the time of impugned order. He has been in the employment of the first party since 22.09.1976 on the aforesaid post. He was having an overdraft account with effect from 04.03.2000 with the aforesaid branch availing a limit of Rs. 35,600/- against his National savings certificates. He requested M.V. Rathwa, Manager of the branch to give one of the national savings certificate number 07EE-618375 due to be matured on 26.02.2002 from the docket for the purpose of deposition of the proceeds against the overdraft account. Accordingly, he encashed the aforesaid national savings certificate and deposited the proceeds in the overdraft account. He further stated that at the time of statutory audit of the bank on 08.07.2002, it was found that out of the securities of national savings certificates bearing number 07EE-618376 maturity date-26.02.2002, and 28EE-336776 maturity date-03.03.2006, former was missing in the security docket which led to make the Rs. 8598/- as unsecured. On the basis of the audit report, first party issued a charge sheet dated 30.05.2002 to him (workman) and also put him under suspension vide order dated 11.04.2002 prior to the issuance of the charge sheet. Sh. N.L. Makwana was appointed as inquiry officer who held the workman guilty against the principles of the natural justice as he had not conducted the inquiry as per the settled rules and law. He was denied the opportunity of defending his case in the inquiry. First party did not lead any evidence regarding the misconduct as alleged by the first party. Inquiry officer simply held him guilty of misconduct on the basis of letter date 05.07.2002. First party issued him a show cause notice regarding punishment without providing the copy of the inquiry report. He was also dismissed vide order dated 24.08.2002 without following the principles of natural justice.

3. He preferred an appeal before the Zonal Manager, Vadodara on 07.10.2002 which was also dismissed vide latter dated 23.12.2002 without considering the facts and circumstances of the case. First party raised the industrial dispute before the labour commissioner, Vadodara who got the reconciliation done but to no result, therefore, this reference for adjudication.

4. He was forced to admit the guilt in the inquiry giving in writing that he took the national savings certificates without informing the manager.

5. The first party in his written statement (Ext.10) denied all the averments made in the statement of claim except admitting the fact of appointment of second party as Cashier-cum-Account Clerk and also the overdraft account as alleged in the statement of claim. Bank also admitted that Sh. N.L. Makwana was appointed as inquiry officer who made the inquiry as per the principles of the natural justice both parties were given the opportunity to give evidence and after due inquiry and evidence workman (second party) was dismissed.

6. First party filed the papers (Ext.13) suspension order, (Ext.14) acknowledgment of suspension, (Ext.15) copy of charge sheet, orders regarding the appointment of inquiry officer and presenting officer along with the inquiry report (Ext.17), show case notice (Ext.18), punishment order (Ext.20), appeal (Ext.21), Minutes of personal hearing to workman (Ext.22), appeal order (Ext.23), proceeding of Labour Commissioner (Ext.24), reply of the bank before the labour commission (Ext.25), list of documents (Ext.27), admission of guilt by workman before the investigating officer (Ext.28), report of investigating officer to Zonal manager (Ext.30), application cum proposal of loan against the banks term deposits (Ext.31), copies of National Savings Certificates besides other banks documents.

7. On the basis of the pleadings of the both the parties, following issues arises:

- (a.) Whether the workman was forced to admit the guilt of taking the National Savings Certificates from the docket without the permission of the Manager ?
- (b.) Whether the workman was denied the opportunity of due hearing in the inquiry in accordance with the principles of natural justice?

- (c.) Whether the workman was dismissed vide punishment order dated 24.08.2002 without giving any notice which makes the impugned order illegal, improper and unjustified?

FINDINGS

- (a) Whether the workman was forced to admit the guilt of taking the National Savings Certificates from the docket without the permission of the Manager? - The burden of proof of this issue was lying on both the parties. No oral evidence has been adduced on this issues by both the parties and the first party was relying on the paper (Ext.28) wherein Sh. M.V. Rathwa, staff office / incharge Manager, Samaliya Branch of the Bank submitted a report to investigating officer, Zonal Office, Vadodara Zone stating that workman Sh. R.C. Vasava confessed his guilt that he took the National Savings Certificates without the permission of the manager. This report is annexed with the admission of workman Sh. R.C. Vasava and two witnesses named Sh. Soni Rajesh Pushpvadanbhai and Sh. Shah Jagdish Rameshchandra witnessed the admission of Sh. R.C. Vasava. As workman has disputed it in the statement of claim alleging that he was not given any opportunity of defending in the inquiry and first party had also not lead any evidence of show cause misconduct makes it necessary for the first party to prove the letter (Ext.29) by way of examining the aforesaid witnesses namely Sh. Soni Rajesh Pushpvadanbhai and Sh. Shah Jagdish Rameshchandra regarding admission of second party workman which has not been done so far. Thus, it can't be said that Sh. R.C. Vasava, workman confessed the taking of the National Savings Certificates from the docket without the permission of the Branch Manager. It was also noteworthy that the branch manager was also not examined in the inquiry to prove the charge of taking the National Savings Certificates by Sh. R.C. Vasava without the permission of the branch Manager. It is noteworthy that Manager of the Branch was neither examined before the enquiry officer nor before the Tribunal because of the reason that had he been examined he would have been compelled to tell the truth. Had the second party workman stolen the NSC from docket without the knowledge of Branch Manager of the Bank, Branch Manager would have lodged the FIR against the workman. In the light of the aforesaid evidence, I come to the conclusion that the questioned NSC was taken by the workman with the express consent of the branch manager. Thus, this issue is decided in the affirmative with the remark that workman was forced to admit the guilt of taking the National Savings Certificates from the docket without the permission of the Manager
- (b) Whether the workman was denied the opportunity of due hearing in the inquiry in accordance with the principles of natural justice? - The burden to prove this issue was on the first party. The inquiry officer has neither examined the witnesses of the first party bank of India nor tried to examine the second party workman in the departmental inquiry and he submitted his report regarding the guilt of the workman simply on the basis of the paper (Ext.29) which is not proved as he did not examined the aforesaid witnesses. Inquiry officer has also not examined the workman as to why he signed the letter (Ext.29). In the said circumstances it may be said that the questioned NSC was taken from the docket with the permission of the manager or rather manager gave the questioned NSC to the workman to get encashed and deposit the proceeds in the bank overdraft account of the workman. Thus, we may assume that branch manager was also guilty of misconduct of permitting the workman employee to take the questioned NSC from the docket. Unfortunately, it is very strange that bank manager was not charge sheeted. It indicates that bank authorities were discriminatory in taking action against the workman and spared the branch manager from the misconduct without any basis. Thus, the said inquiry can not be said to be just, fair, impartial and in accordance with the principles of the natural justice.
- (c) Whether the workman was dismissed vide punishment order dated 24.08.2002 without giving any notice which makes the impugned order illegal, improper and unjustified? - The burden of proof lies on the first party the record reveals that the workman second party was not heard on the point of punishment. In the first appeal workman was also not asked to appear for hearing on the point of punishment.

Here, I would like to point out the mind-set of the authorities and high officials of the Scheduled Banks of India. For this, I would like to quote the news given in the newspaper "THE INDIAN EXPRESS Monday January, 18, 2016" Wherein RBI Governor Mr. RaghuramRajan pained to say, "the rich and well-connected wrong-doer is virtually going scott free" here I reproduced the whole news of the aforesaid newspapers which is as under:-

"Is India a weak state which punishes only the small and weak? RBI GovernorRaghuramRajan who made some plain speaking to his colleagues in the central bank has said "the rich and well-connected wrong-doer" is virtually going scot-free.

In a stinging attack on the issue of culture of compliance, Rajan said, “it has often been said that India is a weak state. Not only are we accused of not having the administrative capacity of ferreting out wrong doing, we do not punish the wrong-doer — unless he is small and weak.”

According to the RBI Governor, this belief feeds on itself. “No one wants to go after the rich and well-connected wrong-doer, which means they get away with even more. If we are to have strong sustainable growth, this culture of impunity should stop,” he said in a recent message to the RBI employees.

Rajan’s observations assume significance as banks are yet to go after big loan defaulters while giving small borrowers a raw deal. “Importantly, this does not mean being against riches or business, as some would like to portray, but being against wrong-doing,” he said.

Rajan also raised the issue whether the RBI is taking a lenient view against malpractices in the banking sector and said there’s “a sense that we do not enforce compliance”.

“My sense is that we need a continuing conversation about tightening both detection as well as penalties for non-compliance throughout the hierarchy. We cannot be seen as a paper tiger,” Rajan said in a message to RBI employees. His comments have come at a time when the RBI and the banking sector are struggling to tackle rising non-performing assets (NPAs) and wilful defaults.

In a scathing self-criticism, Rajan said, “are we allowing regulated entities to get away year after year with poor practices even though these are noted during inspections/scrutinise? Should we become more intolerant of sloppy practices at regulated entities, so that these do not result in massive scams years later? Should we haul up accountants who do not flag issues they should detect?”

“While we should be wary of regulatory overreach, we must also recognise that if we do not expand our responsibilities, others will fill them. That is not always a bad thing, but if new regulators lead to a balkanization of regulation and many regulatory gaps, the system will be worse off,” he said. “Let us be prepared to step up where necessary instead of assuming others will take responsibility.”

Rajan said, “if we demand more of the regulated, we should not be found wanting ourselves. As with all organisations, we are reliant on a few stalwarts who carry the organisation on their broad shoulders. These are the best performers.”

There is a second tier that exceeds the needs of the job through their effort or their capabilities, but they fall a little short of being truly excellent. A third tier consists of time-servers, for whom the job is a source of livelihood but who have lost the desire to excel. They put in a reasonable day’s work, but not an ounce more than what is demanded of them. “And then there are those who are overwhelmed by the work or who have lost any desire to perform. I have encountered all these types at the bank,” he said.

“Our regulations are not always very clear, our staff sometimes is neither well informed of our own regulations nor willing to help the customer, our responses are occasionally extraordinarily slow and bureaucratic (in the sense of hiding behind opaque rules or avoiding a decision rather than taking a sensible course of action),” Rajan said. The imagery that comes to mind for critics is of a traditional unimaginative organisation rather than a dynamic intelligent one, the letter said.

Rajan said the RBI’s budget will be approved by its Central Board. “Our dividend policy is currently being debated with the Government, but we intend to make it rule-based using cutting edge principles, so that the stability of the bank is protected, even while the Government gets all possible dividends from ownership,” he said.

The RBI also intends to improve the board’s oversight of wage and perquisite negotiations. “Transparency and good governance are ways to protect ourselves from roving enquiries — everyone should recognize that an effective regulator has enemies, and like Caesar’s wife, should be above all suspicion,” Rajan said.

**THE CULTURE OF IMPUNITY
SHOULD STOP:RBIGUV**



- "No one wants to go after the rich and well-connected wrong-doer. which means they get away with even more. If we are to have strong sustainable growth, this culture of impunity should stop." he said in a recent message to the RBI employees .
- Rajan's observations assume significance as banks are yet to go after big loan defaulters while giving small borrowers a raw deal, "Importantly, this does not mean being against riches..., as some would like to portray, but being against wrong-doing," he said."

First party has filed the written argument (Ext.45) where in it has been argued that the second party in his statement of claim (Ext.7) expressed innocence regarding misconduct against him and denial of adequate opportunity of hearing and demanded reinstatement of service with full back wages and consequential benefits which has been denied in the written statement by giving documentary evidence (Ext.13 to 39). Despite the admission of the workman second party regarding the misconduct, bank gave the workman full opportunity of hearing which he did not avail. In support of the argument, first party referred *Muljibhai Patel Urological Hospital Vs. Arunaben I. Desai* 2009 I CLR 403 wherein the Hon'ble High Court of Gujarat held that the Labour court has committed an error in interfering with the findings recorded by the Inquiry officer when legality and validity of inquiry was not challenged by the respondent. This judgment does not have any applicability in the present case because there appears to be no negligence on the part of the workman because it is a case where workman was Cashier-cum-Account Clerk who was not normally in the possession of the securities (NSC) and it can be presumed that the NSC would have been taken by the workman with the actual or tacit consent of the branch manager. It can also be assumed that branch manager to avoid departmental action against him has conspired with the inquiry officer and higher authorities to get the admission/confession of the workman alluring him that no action shall be taken against him.

First party's advocate further referred *UPSRTC Vs Vinodkumar* (2008) ISCC (L&S) Pg 1. Wherein the Apex Court held that workman removed from service challenged the conclusion reached by the inquiry officer and the quantum of punishment but did not challenge the legality and fairness of the inquiry proceedings, in such case Labour Court could not examine the findings of the inquiry officer. This judgement also does not have any applicability in the matter because it was a case of misappropriation of passenger fares of 28 persons who were travelling in the UPSRTC bus. Present case is a simple case of taking out the NSC certificate from the docket of the Bank which is normally in the possession of the branch manager. Second, taking out of his own NSC does not make it a case of temporary misappropriation of bank money as workman was the owner of the NSC, he was employee of the bank, and depositing the interest regularly and the remaining third NSC was sufficient to meet out the proceeds of the overdraft accounts loan.

She further, referred *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate* 2005 I LLJ Supreme Court Pg. 15, wherein it has been held Industrial Tribunal could not sit in appeal over the decision of the employer unless there exists a statutory provision.

She further referred *Ravindra N. Chaudhary Vs. Zonal Manager IDBI Bank* 2012 LLR 1267 Bombay, wherein it has been held, it is a settled law that reinstatement should not be always followed with full back wages in every matter. Normally, no work no pay should be the formula by considering the facts, circumstances and background of the matter.

She further referred *Prabhakar Trimbak Vidwans Vs. Stovec Industries Ltd .* 2010 (3) GLR 2310 wherein Gujarat High Court held that termination on grounds of loss of confidence is illegal if made without departmental inquiry.

I considered the arguments and evidence on record of the parties and comes to the conclusion that the inquiry in the present case is a sham. No person will admit his guilt unless some positive assurance is given. In the present case the only misconduct on the part of the workman is taking out the NSC out of the docket of the bank. The inquiry officer has not mentioned in the inquiry report who was the actual custodian of the docket and NSCs placed therein which is a clear cut reflection that inquiry officer was not fair, impartial and just. The conduct of the inquiry officer reflects from the very beginning that he was determined to save the branch manager who permitted the workman rather who gave the NSC to the workman for encashment and to deposit the proceed in the bank against the workman's overdraft loan account.

The learned counsel of the workman argued that the admission/confession of the workman of taking NSC was taken promising the workman of minor action. He further argued that after encashing the NSC workman put the money in his house as the next day was the holiday and his wife without taking her husband- second party workman into confidence, in advertently gave the money to her neighbour which was spent by the neighbour and it was not possible to deposit the same day. The argument is very much tenable and thus, misconduct happened with the tacit consent of the branch manager and inadvertent act of the workman's wife.

The learned counsel of the first party argued that the workman criminally misappropriated the amount one of the NSC. Therefore, action taken was as per the law. Here, I would like to reproduce the provisions of Section 403 of the Indian Penal Code:

“403. Dishonest misappropriation of property- whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Thus, if I read the section 403 of the India Penal Code, there are two ingredients to make out the offence are as under:

1. There must be misappropriation of movable property.
2. The misappropriation must be made with dishonest intention.

Here, in this case the owner of the NSC was workman himself and NSC was submitted as a collateral security to security overdraft account of the workman and even after encashment of questioned NSC the overdraft account was not appears to be unsecured because the remaining third NSC was sufficient to meet out the overdraft account. It is also nowhere in the inquiry report, the inquiry officer has not collected any evidence as to how the third NSC was insufficient to secure the remaining amount of the overdraft account. It is also noteworthy, how an owner of the NSC can be said to be a dishonest misappropriator of his own NSC. Thus in the light of the above discussion, the workman cannot be said to be a dishonest misappropriator of his own NSC. Thus, the argument of the learned counsel of the first party is untenable.

Thus, I come to conclusion, as already said, that the inquiry officer was unfair, partial and unjust in holding the workman guilty of misconduct and saving the branch manager for likely departmental action on account of giving NSC to the workman whose wife inadvertently gave the money to her neighbour. It is also noteworthy that inquiry report reveals that after depositing the proceeds of the first NSC and encashment of second NSC there was only Rs. 8598/- as unsecured loan and in my view, such a petty amount can easily be recovered from the third NSC of Rs.10,000/- on maturity 20,000/- and also from the salary of the workman in due course.

Here, I would like to remind the statement of RBI Governor Sh. Raghuram Rajan who said Banks don't doer to take action against the defaulters who are rich and well connected. Here, I would also like to mention that the King Fisher Airline's owner Sh. Vijay Malya is moving scott free even after duping the banks of thousand crores of rupees and this poor workman has been punished arbitrarily for a petty loan remaining amount of Rs. 9000/- branding it as a unsecured loan which could be easily recovered from the salary or the third NSC. Here, it can only be said that the workman was merely guilty of reminding his wife that the amount placed in the house ought not to be used for any other domestic purpose as it is to deposited in the bank against the overdraft account loan. In my view, it is mere mistake and cannot be said to dishonest misappropriation or service misconduct. For it he ought not to be punished.

The Apex Court in Anil Kumar Mohan Vs Labour Court, Jullundur City and others in Civil Appeal No. 4692(NL) of 1984, dated 8th May 1985 held that the appellant was dismissed after a disciplinary enquiry. He unsuccessfully challenged his dismissal before the Labour Court and the High Court. Hence, the instant appeal to the Supreme Court.

Held: It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons.

Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.

The Hon'ble Supreme Court in Mavji C. Lakum Vs. Central Bank of India GLR Vol. XIIX (3) Pg. 2138 held that Industrial Tribunal may interfere with the punishment awarded by the employer even if the inquiry is found to be fair and proper but for that Industrial Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum punishment.

Thus, It is fit case to interfere in the finding of the inquiry officer as well as the appellate authority and I come to the conclusion that the impugned action taken by the Bank of India first party by terminating the services of Sh. Ratilal C. Vasava by way of dismissal without notice vide punishment order dated 24.08.2002 is illegal, improper and unjustified because inquiry report is a sham and appellate authority as well as appointing authority awarded the punishment without giving the opportunity of personal hearing in such a petty matter and also without considering the facts and circumstance of the case. I find it a case of reinstatement of workman in service with full back wages and consequential benefits and to be recovered from the salary of the then Chief Manager, Bank of India, Vadodara, the then Inquiry Officer, and also the then Branch Manager Sh. M.V. Rathwawho all conspired in the punishment awarded to the workman.

Thus, reference is allowed and the action of the management of the bank of India, Vadodara through the Chief Manager in terminating the services of Sh. Ratilal C. Vasava by way of dismissal without notice vide punishment order 24.08.2002 is hereby held illegal, improper and unjustified. Sh. Ratilal C. Vasava be reinstated in service with full back wage and consequential benefits. The full back wages and consequential benefits shall be recovered from the salary of the then Chief Manager, Bank of India, Vadodara, Inquiry Officer, and also the then Branch Manager who all conspired in the punishment awarded to the workman.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1362.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 141/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 28.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/94/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1362.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 141/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/94/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 26th April, 2016

Reference: (CGITA) No. 141/2010

The Dy. General Manager,
Bank of Baroda,
South Gujarat Zone,
Nanpura,
Surat(Gujarat)

... First Party

v/s

The General Secretary,
Gujarat Bank Workers' Organisation,
C/o Bhartiya Mazdoor Sangh, Anustu Tekri
Near Kothi Char Rasta,
Vadodara (Gujarat)

... Second Party

For the First Party : None
 For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/94/2008-IR(B-II) dated 06.02.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of Baroda through the Assistant General Manager, Surat imposing punishment as reduction by two stages in time scale of pay for a period of two years from the pay of Shri Rajnikant M. Rathod vide order dated 30.03.2004 is legal, just and proper? To what relief the concerned workman is entitled to?”

1. The reference dates back to 06.02.2009. All the parties were served. Second party submitted the statement of claim Ext. 11 on 20.06.2012. First party did not submitted the written statement. Therefore the case was fixed for exparty evidence of second party on 18.06.2014 but this is strange that both the parties have been absent since then. Thus the second party does not appear to be willing to prosecute the case.
2. Thus the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1363.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1247/2004) आईटीसी सं. 8/2004 को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/285/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1363.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1247/2004) ITC No. 8/2004 of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Dena Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/285/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
 Presiding Officer, CGIT cum Labour Court,
 Ahmedabad,
 Dated 5th April, 2016

Reference: (CGITA) No. 1247/2004

Reference: (ITC) No. 8/2004

1. The Regional Manager,
 Dena Bank.
 Regional Office,
 Station Road,
 Bhuj(Kutch)

... First Party

Vs.

Their Workman,
Through the President,
Kachch Jilla Mazdoor Vikas Manch,
Vora Sat Dela, Nagar Chakal,
Bhuj(Kachch)

... Second Party

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/285/2003-IR(B-II) dated 08.03.2004 referred the dispute for adjudication to the Industrial Tribunal, Rajkot(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Dena Bank, Bhuj in not regularising/appointing the services of Shri Kishor N. Chauhan on permanent basis is legal and justified? If not, what relief the workman concerned is entitled to?”

2. This reference dates back to 08.03.2004. Both the parties were served. Second party submitted vakalatptra (Ext.5) Second party was issued fresh notice on 07.03.2016 through speed post but has not turned up and has also not filed the statement of claim. Thus, it appears that second party is not willing to proceed with the reference as they have been absent since last several dates. Thus Tribunal has no option but to dismiss the reference in default of the second party.

This reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1364.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 139/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/950/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1364.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 139/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/950/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 26th April, 2016

Reference: (CGITA) No. 139/2010

The Dy. General Manager,
Bank of Baroda,
South Gujarat Zone,
Nanpura,
Surat(Gujarat)

... First Party

v/s

The General Secretary,
Gujarat Bank Workers' Organisation,
C/o Bhartiya Mazdoor Sangh, Anustu Tekri
Near Kothi Char Rasta,
Vadodara (Gujarat)

... Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/950/2008-IR(B-II) dated 10.02.2009 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of Baroda by not informing the workman Shri Rajnikant M. Rathod for the two promotion exercises vide letter dated 29.08.2006 is amounts to unfair labour practice? And the action of management for not informing the workman at his residence is legal, proper and just? To what relief the concerned workman Shri Rajnikant M. Rathod is entitled to?”

1. The reference dates back to 10.02.2009. The second party submitted the statement of claim Ext. 6 on 22.02.2010. However first party did not submitted the written statement. The case was fixed for evidence of the second party on 30.08.2011 but despite giving dozen of opportunities to lead evidence, second party did not prefer to lead evidence. Therefore it appears that the second party has no interest in the prosecution of the case.

2. Thus the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1365.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 183/2006) आईटीसी सं. 1542/2008 को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/51/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1365.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 183/2006) ITC No. 1542/2008 of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/51/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 1st April, 2016

Reference: (CGITA) No. 183/2006**Reference: (ITC) No. 1542/2008**

The Regional Manager,
Bank of Baroda,
2nd Floor, M.G.Road, Near GPO,
Rajkot

...First Party

Vs.

Their Workman,
Through the Assistant Secretary,
Gujarat Bank Workers Union,
Rahbar, 8, Jagnath Plot,
Rajkot-360001

...Second Party

For the First Party : Shri V. K. Mashar, Advocate

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/51/2006-IR(B-II) dated 11.10.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of Baroda, Rajkot (A) in withdrawing the Head Cashier Category ‘E’ allowance w.e.f. 30.09.2003 of Shri M. H. Halani is legal and justified when his junior are getting the same and (B) not selecting Shri Halani as Head Cashier ‘E’ while he was working as Universal Teller on probationary post with adhoc special allowances while two other employees have been selected as Head Cashier Category ‘E’ is legal and justified? If not, what relief the workman concerned is entitled to?”

1. This reference dates back to 11.10.2006. Second party filed statement of claim (Ext.9) on 19.09.2008 and first party filed the written statement (Ext.15) on 15.11.2011. Despite giving dozens of opportunities second party has not preferred to lead evidence. Thus, it appears that second party is not willing to proceed with the reference as they have been absent since last several dates. Thus, Tribunal has no option but to dismiss the reference in default of the second party.

This reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1366.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजया बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 246/2004) आईटीसी सं. 28/1999 को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12013/40/98-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1366.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 246/2004) ITC No. 28/1999 of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12013/40/98-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 5th April, 2016

Reference: (CGITA) No. 246/2004**Reference: (ITC) No. 28/1999**

1. The Asst. General Manager,
Vijaya Bank,
Regional Office, Kamdhenu Complex, Polytechnic, Ambawadi,
Ahmedabad-380001

...First Party

Vs.

Their Workman,
Through the regional President,
Vijaya Bank Emp. Union, C/o, Vijaya Bank,
Relief Road,
Patharkuwa,
Ahmedabad

...Second Party

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12013/40/98-IR(B-II) dated 14.01.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Vijaya Bank in not granting Leave Concession to Shri Dinesh Nandlal Gohel after 3.7.96 for the period ending on 3.7.96 is legal and justified? If not, to what relief the said workman is entitled?”

2. This reference dates back to 14.01.1999. Second party submitted statement of claim (Ext.4) on 06.10.1999. First party submitted written statement (Ext.6) on 03.05.2000. since then second party has not been responding and has also not present to lead evidence. Thus, it appears that second party is not willing to proceed with the reference as they have been absent since last several dates. Thus Tribunal has no option but to dismiss the reference in default of the second party.

This reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1367.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद के पंचाट (संदर्भ सं. 25/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/215/2001-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1367.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/215/2001-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD**

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D.ACT, 1947

Ref. No. 25 of 2014

Employers in relation to the management of Central Bank of India, Patna

AND

Their workmen

Present:- Sri Ranjan Kumar Saran, Presiding officer**Appearances:**

For the Employers : Sri B.K.Garg, Law Officer

For the workman : Sri B.Prasad, Rep.

State : Bihar

Industry : Banking

Dated. 19/02/2016

AWARD

By Order No.L-12011/215/2001 -IR -(B-II), dated 19/06/2002, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Central Bank of India in not regularizing the service of their workman Shri Md. Eqbal Driver, Saharsa Branch , Shri Om Prakesh Pandit Driver, Patna Branch and Shri Dinesh Singh, Driver of Patna Branch is justified? If not, what relief the workman are entitled to?”

2. This case is received by the CGIT No.2, Dhanbad on 30.07.2002 registered as Reference Case No. 50/02. After receipt of the case, both parties were noticed, the workman files their written statement on 12.08.2002. The management files their written statement on 12.06.2003. Two witnesses have been examined on behalf of the workman and documents of workman is also marked as W-1 to W-6 before the CGIT No.2.
3. Thereafter vide letter No. L-12011/215/2001 IR (B-II) dated 12/02/2014 this case is received from CGIT NO.2 on 12/03/2014, on transfer basis to proceed from the stage at which it is transferred, and registered as Reference case No. 25/2014 before the CGIT No.1, Dhanbad.
4. The case of the workman is that Md. Eqbal, Om Prakash and Dinesh Singh were orally appointed to discharge the duties of Driver of Bank's vehicle allotted to the Regional manager, Central Bank of India, in different Branches in different dates. All are regularly driving the vehicles from 9.00 Am to 6 P.M and beyond that as per requirement. Sometimes they have to work for 16 hours. All the vehicles were purchased by Central Bank with repairing and other cost borne by the management.
5. The workmen are paid wages Rs. 2600/- and discharge all the duties of permanent driver but without any service condition. The matter of regularising the service of the workmen was taken up by the sponsoring Union with the management on a number of occasions but no positive steps was taken by the management accordingly an Industrial Dispute was raised.
6. On the other hand the case of the management is that no Employer -employee relationship exists between the management of Central Bank of India with Md. Eqbal , Om Prakash Pandit and Dinesh Singh. And the concerned workmen were never selected by the selection Committee of the Bank as per the recruitment rules of the management. The persons concerned are the personal drivers of the Executives. And they paid the wages to the concerned persons from the allowances granted to them by the management. And reimbursed the allowance keeping them as their personal driver.
7. It is also submitted by the management that the Hon'ble Supreme Court held in a case that the personal driver of the executive are not the employees of the bank as such they are not entitled for regularisation in the Bank.
8. The short point to be decided in this reference is whether the driver engaged by the Bank officials, who are driving the Bank's vehicle, for the bank Officers will be regularised or not.
9. The workmen submitted that he is giving service to the bank by driving their vehicles and also getting wages through bank and filed the bank documents.
10. Moreover from the documents filed by the workman, the bank people has settle guide lines for selection and selected driver to drive bank vehicles.

11. The workman also filed the photo copy of log book of vehicle. The bank management though accepted that the workman was driving the vehicle but argued that they were driving their personal vehicle but since the bank paying them wages since long time.

12. As per Ext W-3 the bank's chief manager issued certificate that the summer uniform and winter uniform are issue to them. Ext. W-6/1 is contains reimbursement bill and the workman files photo copy of cheques . Moreover cost of uniform and shoes are reimbursed to the personal Driver on production of bill. It is also mentioned in Ext.M-4 it appears that who have completed service for one year is to be regularized.

13. One letter No 341 dated 10.06.2000 written by Regional Manager in which he certified that Md. Eqbal is working from 20.11.90 . He was also recommended that to appoint him on the post of Peon. On Perusal of all voluminous document of workman it is very much clear that bank management ought to regularise them.

14. Considering the facts and circumstances of this case, I hold that the action of the management of Central Bank Of India in not regularizing the service of their workman Shri Md. Eqbal Driver, Saharsa Branch , Shri Om Prakesh Pandit Driver, Patna Branch and Shri Dinesh Singh, Driver of Patna Branch is not justified, Therefore the management is directed to regularise the workman against the vacant in class IV or driver post within one month from the date of publication of the award, as other wise they will be full back wages from the 31st day of publication of award.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 28 जून, 2016

का.आ. 1368.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, दिल्ली के पंचाट (संदर्भ सं. 106/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/87/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 28th June, 2016

S.O. 1368.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12012/87/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 106/2011

Shri Sher Singh,
S/o Shri Babu Ram,
R/o Brij Vihar,
Flat No.6,
Loni District,
Ghaziabad, Uttar Pradesh

...Workman

Versus

The Regional Manager,
Indian Overseas Bank,
2, Rajendra Place,
New Delhi

...Management

AWARD

Brief facts giving rise to the present case are that a reference was received by the Central Government Industrial Tribunal-cum-Labour Court No.2 vide letter No. L-12012/87/2007-IR(B-II) dated 27.11.2007 with the following terms:

- ‘Whether the action of the management of Indian Overseas Bank in compulsory retiring their workman Shri Sher Singh, Messenger, Indian Overseas Bank, Janpath Branch, New Delhi with effect from 15.04.2005 is just, fair and legal? If not, to what relief the workman is entitled to?’
2. After issuance of notice to both the parties, workman herein, Shri Sher Singh filed statement of claim wherein it is alleged that the workman is a scheduled caste and was deployed as safai karamchari for cleaning the office building of the management at Janpath vide appointment dated 20.09.1977. The workman remained honest, hardworking, obedient and respectful towards his officers and thereafter was permanently appointed in the bank on 30.05.1978. Workman was performing his duties diligently and later on was promoted to the post of messenger.
 3. It is averred in the para 6 of the claim that due to difficulties the workman went on leave and informed the management. He himself used to remain ill and his wife also suffered from illness along with children. He sent medical certificates to the management. Management did not consider his leave application as his medical certificate has not been obtained from a Government hospital. In fact, the workman has received medical treatment from a private Hospital/doctor.
 4. Suddenly in the month of November 2004, the workman could not attend the Bank due to operation of his wife and he himself also fell ill. His wife was later on operated. Application sent by the workman was not considered by the management. The workman is absolutely illiterate. Management had obtained signature of the workman on some papers taking benefit of his being scheduled case and illiterate. Management has terminated services of the workman on the basis of report of the Enquiry Officer.
 5. The workman challenged the vires of the enquiry conducted by the management on several grounds which are fully detailed in para 11 onwards of his statement of claim. It is primarily held that the workman was not allowed to take the help of a defence assistant. Punishment of termination/compulsory retirement awarded to the workman is against the rules.
 6. Reply to the statement of claim was filed on behalf of the management wherein preliminary objections have been taken. It has been alleged that during the service, the workman was not obedient or hard working. He used to remain absent most of the time. There were complaints of misconduct and misbehavior. Bank had taken a lenient view as the workman used to regret for his misconduct and apologize for the same. He has given assurance that he would behave in future. Despite such assurances, there was no change in his behavior and conduct of the workman. As such, he was charge sheeted on 11.02.1984 for his riotous behavior with a lady sweeper of the hostel, wherein enquiry was conducted and punishment of stoppage of two increments was awarded vide order dated 29.10.1985. Again the workman was charge sheeted on 04.05.1989 for his unauthorized absence from July 1988 to March 1989 for 125 days without prior permission. Workman has left the branch unauthorizedly from December 1988 to March 1989. For this misconduct, he was issued ‘warning’ on 22.09.1989. Even at that time, the workman had given assurance of good behavior in future. Later on the workman was again charge sheeted on 16.09.1996 for his unauthorized absence and enquiry was instituted against him resulting in stoppage of one future increment without cumulative effect. The workman was placed under suspension on 25.09.1997 for his riotous behavior with the Chief Manager of Model Town branch of the management, resulting in award of punishment of stoppage of one future increment with cumulative effect on 01.04.1998. Thereafter, again the workman was charge sheeted for his unauthorized absence from 09.01.2003 to 23.10.2003. Because of his frequent absenteeism, he was imposed punishment of reduction of basic pay by two stages on 12.03.2004. It is also denied that the workman remained absent due to illness or family problems. Workman never informed the branch officials whenever he remained absent from duties. It is also denied that he remained absent due to severe fever/typhoid. He never sent medical certificate or filed any other document regarding his illness. On merits, bank has denied other averments made by the workman regarding justification of his absence on various dates as well as misbehavior with his superiors. It is finally prayed that the claim petition be dismissed.
 7. Rejoinder was filed by the workman wherein stand taken in the statement of claim was reasserted and material averments contained in the written statement filed by the management were denied.
 8. It is clear from the record that no specific issues were framed by my learned predecessors on the basis of pleadings of the parties.
 9. Vide Order No.Z-22019/6/2007-IR(C-II) dated 30.03.2010, the appropriate Government transferred the case to this Tribunal.

10. With a view to adjudicate vires of the domestic enquiry conducted by the management, the workman examined himself as WW1 and tendered in evidence his affidavit, Ex.WW1/A, which is on the same lines as has been taken in the statement of claim. Management, in order to rebut the case of the workman, examined Shri Arup Ratan Sengupta, Senior Manager as MW1 and his affidavit is Ex.MW1/A. It is very exhaustive affidavit wherein plea of the workman regarding unauthorized absence without any cause has been reiterated. Bank also examined Shri T.J. Bhattacharjee, Chief Manager as MW2 and his affidavit is Ex.MW2/A. Shri Ramesh Kumar was examined as MW3 by the management and his affidavit is Ex.MW3/A. This witness has tried to prove extract of attendance register for 13.11.2004 to 31.01.2005 as well as payment of salary to the workman herein. In fact, he was posted in Janpath branch as Senior Manager from April 2004 to 2012.

11. My learned predecessor vide a order dated 07.06.2012 considered the evidence adduced by the parties and held that the enquiry against the workman was concluded on 22.02.2005 and it clear from perusal of the proceedings Ex.WW1/M14 recorded on 22.02.2005 that the workman herein was not represented by defence representative before the Enquiry Officer. He was also questioned on that date whether he understood contents of the allegations contained in the charge sheet. He has admitted receipt of the charge sheet and requested the Enquiry Officer to explain the charges. It was also observed by the Tribunal that no evidence worth the name regarding the allegations of willful insubordination or disobedience of lawful orders has been adduced by the bank. As such, it was held that the enquiry was neither fair nor proper. Resultantly, preliminary issue as to the fairness of the enquiry was answered against the management/bank and in favour of the claimant.

12. Thereafter, opportunity was afforded to both the parties to adduce evidence on merits regarding validity of the allegations contained in the charge sheet. It was thereafter that Shri T.J. Bhattacharjee was examined by the management. Shri Ramesh Kumar, Senior Manager. The workman examined himself in rebuttal and tendered in evidence his affidavit Ex.WW1/B.

13. I have heard Shri A.K. Dubey, A/R for the workman and Shri M.P. Bansal, A/R for the management.

14. Before I proceed to consider the comparative merits of the submissions raised on behalf of either of the parties, it is necessary to delineate the charges with which the workman herein was charged. Same are contained in charge Ex.WW1/M12, which reads as under:

‘It is reported that while working as a Messenger at Janpath branch, New Delhi, you have committed following act of omission and commission for which you are charge sheeted as follows:

- i. you are very irregular in your attendance and frequently remain absent from duty without prior permission and proper notice.
- ii. You have absented yourself from duty from 13.11.2004 and remain absent till date.
- iii. You were asked to report back for duty vide Janpath branch letters dated 16.11.2004 and 27.11.2004 but despite that you have not resumed duties
- iv. Your frequent unauthorized absence from duty causes dislocation in the branch routine.
- v. In the disposal of the charge sheet dated 23.10.2003, the then Disciplinary Authority had taken a lenient view due to your assurance vide your letter dated 27.0.2004 about not dislocating the branch routine in future. You have however not acted as per your assurances and continue to dislocate the branch routine.

The above acts if established in an enquiry will render you guilty of ‘gross misconduct’ in terms of para 5(e), (j) & (p) and ‘minor misconduct in terms of para 7(a) & (b) of the Bipartite Settlement dated 10.04.2002 between the Bank and its Workmen which are reproduced as follows:

- 5(e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
- 5(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;
- 5(p) Remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days
- 7(a) absence without leave or overstaying sanctioned leave without sufficient grounds;
- 7(b) unpunctual or irregular attendance’

15. It is also appropriate to mention here that the workman herein has not filed any reply to the charge sheet. Equally important is the fact that when the workman was initially examined as WW1, his affidavit being Ex.WW1/A,

he has made certain vital admissions which really proves that the workman herein is a habitual absentee. He has admitted the factum of being served with a charge sheet and not filing of reply by him. He has also admitted service of a charge sheet when he entered into a quarrel with a lady regarding sweeping of the floors etc. He was served with charge sheet that in that case also and was awarded penalty of stoppage of two increments. In this regard, order passed by the competent authority Ex.WW1/M2, reads as under:

‘Keeping in view your past record into account, I hereby pass original order of to have your ‘two increments stopped with cumulative effect’ under para 17.6(d) of our Bipartite settlement between the bank and its workmen dated 14.12.1966.’

16. In his subsequent cross examination dated 09.08.2011, workman has further admitted that he was compulsorily removed from service from the job on 15.04.2005. Record of the case further shows that vide Ex.WW1/M7, dated 30.04.1997 pertaining to previous enquiry, the workman has voluntarily admitted the charges as is clear from the show cause notice to the charge sheet dated 16.09.1996. The competent authority has passed punishment of withholding of one increment, as is clear from order Ex.WW1/10. Workman further made a vital admission that he was generally proceeding on leave without applying for the same and later on he used to express apology to the authorities for absenting himself without sanction of leave, though he has stated that he was later on furnishing medical certificates regarding his illness. There is nothing on record to show that the workman has filed any document pertaining to his illness. There is no merit in the contention of the workman that management was insisting upon production of medical certificate from a Government hospital inasmuch as there is no recording of such fact in the enquiry nor this plea has been specifically taken by the workman in his pleadings.

17. It is clear from documentary evidence on record right from Ex.WW1/M1 onwards to Ex.WW1/M16 that the workman herein has been from time to time absenting from duty without moving any application or seeking permission of the authorities as a result of which he was expressing regrets or apology resulting in various punishments.

18. Authorized representative appearing on behalf of the workman argued that in fact the workman had applied for leave as is clear from letter Ex.MW3/40. I have gone through this letter which shows that the workman has mentioned that he is upset. As such, he is not in a position to attend office from 16.11.2004 to 30.11.2004. Thereafter, management issued letter/reply to the workman vide letter Ex.MW3/41 dated 16.11.2004, which clearly shows that it was made clear to the workman that he was frequently absenting from duties without getting leave sanctioned. He was advised to report for duties immediately. Workman herein has not filed any reply to the above letter. Thereafter vide another letter dated 16.11.2004, Ex.MW3/42, period of absence from 13.11.2004 onwards was treated as unauthorized absence. There is another letter of the management Ex.MW3/43 dated 27.11.2004 addressed to the workman which again shows that his application dated 25.11.2004 regarding leave with effect from 01.12.2004 to 31.01.2005 was rejected as the same was not accompanied by any medical certificate. During the course of arguments, this Tribunal asked the workman to produce any proof regarding his illness or copy of medical certificate, which he has filed with the authorities when he was ill. The Authorized representative of the workman was not in a position to refer to any medical certificate or even produce copy of the same from his record so as to justify his absence from duty during the period mentioned in the charge sheet. It is further clear from the evidence of Shri Arup Ratan Sengupta MW1 that he has made deposition on the basis of official record. He referred to the various show cause notices issued to the workman. The workman has also filed appeal against the order of compulsory retirement, which was also rejected by the authority. Shri T.J. Bhattacharjee was examined by the management as MW2. This witness has referred to the extract of attendance of the workman, copy of which is Ex.MW2/2 as well as various letters issued by the bank to the workman regarding his unauthorized absence. Letter Ex.MW2/11 clearly shows that absence of the workman from 13.11.2004 was treated as unauthorized. Further letter Ex.MW2/12 shows that regarding leave with effect from 01.12.2004 to 31.01.2005, his request for leave was declined on the ground that it was not accompanied by any medical certificate. Therefore, plea of the workman that he has filed medical certificate before the authority during the course of enquiry appears to be an afterthought and is not supported by any documentary evidence.

19. It has been held by the Hon'ble High Court of Delhi in the case of DTC vs. Bir Singh (2016 LLR 61) that when an employee is a habitual absentee, who has been absenting from duty unauthorizedly without permission, such an employee is not entitled for any leniency and merely because the leave period is finally adjusted without pay, the same would not amount to sanctioned leave. Order passed by the competent authority regarding his removal from job was held to be valid. In the case in hand also there is ample material on record as discussed above, that the workman herein was remaining absent for long period and that too without any justification.

20. Similar view has been taken in the case of Nimai Charan Raut Vs. General Manager, M/s Utkal Asbestos (2016 LLR 29). In the said case it was held that it is not always necessary to conduct a domestic enquiry prior to effecting of termination of service of a delinquent employee when such an employee is a habitual absentee. In the above case also, the employee has tendered apology on several occasions but there was no improvement in his behavior. Same is the situation in the case on hand inasmuch as the workman herein has not shown any improvement

or efficiency in work and every time he was remaining absent without moving requisite application. Record of the case also shows that the disciplinary authority, on previous occasions, taken a lenient view of the incidents.

21. As a sequel to my above discussion, it is held that the charges mentioned in the charge sheet regarding absence from duty during the period mentioned in para 1, 2, 3, 4 and 5 of the charge sheet Ex.WW1/M2 stands proved. As such, action of the management in retiring the said worker on 15.04.2005 is just, fair and legal. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 18, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 29 जून, 2016

का.आ. 1369.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ट्रिनिटी कमर्शियल प्रा. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 12/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-29012/44/2013-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th June, 2016

S.O. 1369.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Trinity Commercial Pvt. Ltd. and their workman, which was received by the Central Government on 20.06.2016.

[No. L-29012/44/2013-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 12/2014

No. L-29012/44/2013-IR(M), dated 03.04.2014

Date of Passing Order – 24th May, 2016

Between:

M/s.Trinity Commercial Pvt. Ltd.,
Contractor of M/s. Serajuddin & Co.
Balda Block Iron Mines, At./Po. Baneikela,
Via. Joda, Dist. Keonjhar (Odisha), Keonjhar.

... 1st Party-Management.

(And)

Shri Renso Munda,
At./Po. Balda, Via. Joda,
Dist. Keonjhar, (Odisha),

... 2nd Party-Workman.

Appearances:

None	...	For the 1 st Party - Management.
None	...	For the 2 nd Party - Workman.

ORDER

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Trinity Commercials Pvt. Ltd., and their workman Shri Renso Munda in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-29012/44/2013 – IR(M), dated 03.04.2013 to this Tribunal for adjudication.

2. That the 2nd Party-workman has filed his statement of claim on 16.06.2014. He has not filed any documents to substantiate his case. Since he did not take any step except filing of his statement of claim the 2nd Party-workman was noticed on 23.03.2016 after the new P.O. Joins. Notice issued to him seems to have been duly served. But, the 2nd Party-workman did not appear.

3. On the other hand, the 1st Party-Management did not file its written statement, though the 2nd Party-workman has served a copy of statement of claim on them through post. Also, notice was issued to the 1st Party-Management to file its written statement on 23.03.2016 from this Tribunal, but, neither the 1st Party-Management appeared nor any step taken by it.

4. It appears from the above acts of the parties that either they have lost their interest in the case or they might have resolved their disputes amicably out of the court. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

5. The reference is answered in the above terms.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 29 जून, 2016

का.आ. 1370.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ट्रिनिटी कर्माश्रित प्रा. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 13/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-29012/43/2013-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th June, 2016

S.O. 1370.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Trinity Commercial Pvt. Ltd. and their workman, which was received by the Central Government on 27.06.2016.

[No. L-29012/43/2013-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 13/2014

No. L-29012/43/2013-IR(M), dated 03.04.2014

Date of Passing Order – 24th May, 2016

Between:

M/s.Trinity Commercial Pvt. Ltd.,
Contractor of M/s. Serajuddin & Co.
Balda Block Iron Mines, At./Po. Baneikela,
Via. Joda, Dist. Keonjhar (Odisha), Keonjhar.

... 1st Party-Management.

(And)

Shri Champa Munda,
At./Po. Balda, Via. Joda,
Dist. Keonjhar, (Odisha),

... 2nd Party-Workman.

Appearances:

None	...	For the 1 st Party - Management.
None	...	For the 2 nd Party - Workman.

ORDER

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Trinity Commercials Pvt. Ltd., and their workman Shri Champa Munda in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-29012/43/2013 – IR(M), dated 03.04.2013 to this Tribunal for adjudication.

2. That the 2nd Party-workman has filed his statement of claim on 16.06.2014. He has not filed any documents to substantiate his case. Since he did not take any step except filing of his statement of claim the 2nd Party-workman was noticed on 23.3.2016 after the new P.O. Joins. Notice issued to him seems to have been duly served. But, the 2nd Party-workman did not appear.

3. On the other hand, the 1st Party-Management did not file its written statement, though the 2nd Party-workman has served a copy of statement of claim on them through post. Also, notice was issued to the 1st Party-Management to file its written statement on 23.3.2016 from this Tribunal, but, neither the 1st Party-Management appeared nor any step taken by it.

4. It appears from the above acts of the parties that either they have lost their interest in the case or they might have resolved their disputes amicably out of the court. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

5. The reference is answered in the above terms.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 29 जून, 2016

का.आ. 1371.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मिनरल एक्सप्लोरेशन कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ सं. 199/1994) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.06.2016 को प्राप्त हुआ था।

[सं. एल-29011/2/1993-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th June, 2016

S.O. 1371.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 199/1994) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mineral Exploration Corporation Ltd. and their workman, which was received by the Central Government on 23.06.2016.

[No. L-29011/2/1993-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No. 199/1994

Employer in relation to the management of Mineral Exploration Corporation Ltd.

AND

Their workman

Present:

Shri R. K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D. K. Verma, Advocate

For the workman : Shri D. Mukherjee, Advocate

State : Jharkhand

Industry : Coal

Dated- 09/06/2016

AWARD

By order No. L-29011/2/ 1993 -IR (M) dated- 28/07/1994, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of M/S Mineral Exploration Corporation Ltd, Nagpur in retrenching Sri P.K.Mishra and 27 others (Names in the annexure) from the service of the Mineral Exploration Ltd is justified ? If not, to what relief the workmen are entitled?”

Note :- list of workmeee is not enclosed with order of reference.

2. After receipt of the reference , both parties are noticed. But appearing for certain dates, Ld Counsel for the workman submits that workman is not interested to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 29 जून, 2016

का.आ. 1372.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स तमिलनाडु मैग्नेसाइट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 58/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.06.2016 को प्राप्त हुआ था।

[सं. एल-27011/6/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th June, 2016

S.O. 1372.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Tamilnadu Magnesite Ltd. and their workman, which was received by the Central Government on 23.06.2016.

[No. L-27011/6/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 14th June, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 58/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Tamilnadu Magnesite Ltd. and their workman)

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
Salem District Magnesite Pattali Thozhirsangam
Keelboard, Mamangam
Salem-636302

AND

The Chairman-cum-Managing Director : 2nd Party/Respondent
Tamilnadu Magnesite Ltd.
5/53, Omalur Main Road
Jagir Ammapalayam Post
Salem-636002

Appearance :

For the 1st Party/Petitioner Union : M/s. A. Nasarathinam, Advocates
For the 2nd Party/Respondent : M/s. M. R. Raghavan, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-27011/6/2015-IR (M) dated 29.04.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of TANMAG Ltd, Salem in respect of not considering the revision of contract employees on par with 6th Pay Commission is justifiable or not? If not, to what relief the workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 58/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered Trade Union formed for the welfare of the workers working in the Magnesite industry including the contract labours. The Petitioner Union and other Unions had submitted a Charter of Demands to the Respondent for implementation of the 6th Pay Commission on par with staff and officers of the Respondent and also for regularization of contract workers. A settlement under Section-18(1) of the ID Act was entered into on 06.11.2010 between the petitioner and other unions and the Management. By the said settlement the Respondent had agreed for implementation of 6th Pay Commission recommendations for the workmen on par with staffs and officers of the Respondent w.e.f. 01.12.2010 and also to pay @ Rs. 40/- per day to the contract workers in addition to minimum

wages, from 06.11.2010. However, the Respondent did not implement the terms of the settlement. The Industrial Dispute is raised accordingly. The case of the Respondent that the settlement dated 06.11.2010 was superseded by another settlement is not correct. The settlement dated 06.11.2010 is still binding on the Respondent. An award may be passed directing the Respondent to extend the monetary benefits agreed upon by the settlement to the members of the Petitioner Union.

4. The Respondent has filed Counter Statement contending as below:

On 06.11.2010 a settlement was arrived at between various Unions representing the workmen and Management under Section-18(1) of the Industrial Disputes Act. By the said settlement the Respondent agreed that revision of wages for the workmen will be finalized on the pattern implemented to staffs and officers as per recommendations of 6th Pay Commission of Government of Tamilnadu. It was also agreed that the Management would give Rs. 40/- more than the minimum wages to the contract workers. The Petitioner Union approached the Assistant Labour Commissioner seeking implementation of the clauses in the settlement. While this petition was pending a subsequent settlement was entered into with the very same Unions representing the workers and the Management, on 22.08.2011. Through this settlement the workmen were paid wages as per the pattern mentioned in the 6th Pay Commission. So far as payment of additional amount to the contract labourers were concerned it was resolved that the issue shall be discussed and finalized through mutual discussion. A clause was incorporated in the settlement to the effect that this would supercede all the provisions of the earlier settlement dated 06.11.2010. The dispute itself is not maintainable. The Respondent is not the employer in so far as the contract employees are concerned. The recommendation of the Pay Commission is in respect of regular employees of the Government only. The commission does not fix wages for the contract employees. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the contentions in the Counter Statement and reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W6.

7. **The points for consideration are:**

- (i) Whether the Respondent is bound to pay monetary benefits to the contract workers on the basis of the recommendations of the 6th Pay Commission?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The Petitioner Union has raised the dispute claiming that its members who are contract workers are entitled to monetary benefits on the basis of the recommendations of the 6th Pay Commission of the Government of Tamilnadu. It is stated in the Claim Statement of the petitioner that the petitioner and other unions have entered into a settlement with the Respondent on 06.11.2010 and in this settlement the Respondent has agreed to implement the recommendations of the 6th Pay Commission and also agreed to pay rs. 40/- in addition to the minimum wages to the contract workers from 06.11.2010 in lieu of regularization of the contract workers.

9. The case of the Respondent is that the dispute itself is not maintainable for the reason that there is no employer-employee relationship between it and the contract workers and therefore it is not liable to extend any benefits to the contract workers. It is the further case of the Respondent that the settlement dated 06.11.2010 has been superseded by another settlement on 22.08.2011 and the Petitioner Union cannot make any claim for implementation of the terms of the previous settlement.

10. Admittedly, the Petitioner Union is claiming relief on behalf of the contract workers of Tamilnadu Magnesite Ltd., the Respondent. Thus it is apparent that the worker are not working under the Respondent directly, but working for the Respondent only through the Contractors who have employed them. So definitely there is no employer-employee relationship between the Respondent and the concerned workmen. For this reason itself the petitioner has no *locus-standi* to raise the dispute.

11. Even assuming that the dispute is maintainable the petitioner is not entitled to any relief. The relief claimed is on the basis of Ext.W1-the settlement entered into under Section-18(1) of the ID Act between the petitioner and some other Unions and the Respondent. There is no clause in Ext.W1 to the effect that the wages of the contract workmen will be revised in the pattern of the staff and officers of the Respondent as per the recommendations of 6th Pay Commission of Government of Tamilnadu. There is no such clause of settlement even in respect of the regular workmen of the Respondent in Ext.W1. The first clause of Ext.W1 which is the relevant one states only that the revision of the wages of workmen will be finalized on the pattern implemented to staff and officers as per the recommendations of the 6th Pay Commission of Government of Tamilnadu after due negotiation and further

concurrence from the Government. The workmen referred to in the clause are apparently the regular workmen only. Again there is no agreement to pay wages as per 6th Pay Commission recommendations even to the regular workmen as per the settlement. The agreement is only to have due negotiation and further concurrence from the Government.

12. On 22.08.2011 another settlement was entered into between the same Unions including the Petitioner Union and the Respondent. This is marked as Ext.W5. By this settlement a revised wage scale for the workmen is agreed upon by the parties. As per the scope of the settlement it is to cover all the workmen who are drawing wages on scales as per settlements from time to time and who are in the rolls of the Respondent as on 01.12.2010 only. Apparently, the contract workmen are not workmen who were in the rolls of the Company as on 01.12.2010. Apart from this, there is a specific clause i.e. Clause-18 superceding Ext.W1-the previous settlement on the basis of which the claim is made by the petitioner. Clause-18 states that it supercedes all the provisions of the settlement dated 06.11.2010 unless specifically stated against any item or supplement the provisions of earlier settlements. By the execution of Ext.W5 settlement Ext.W1 has become something nonest. The petitioner is not entitled to the implementation of the recommendations of the 6th Pay Commission in respect of the contract workers for the reason that there is no such clause in Ext.W1 and also because the settlement does not even exist at present.

13. When the settlement itself does not exist there is no question of payment of monetary benefits agreed to as per Ext.W1 to the contract workers also. Ext.W1 contains a clause that the Management has agreed to give Rs. 40/- more than the minimum wages to the contract workers with effect from the date of signing of the settlement. While executing Ext.W5 the new settlement it is stated in its preamble portion that the earlier settlement i.e. Ext.W1 could not be implemented. Clause-20 of Ext.W5 states that the issues regarding contract labour shall be discussed and finalized by mutual discussion. Thus the same Unions who have executed Ext.W1 settlement have given a go-by for the clauses of the earlier settlement by agreeing for this clause regarding contract labour and also by agreeing for Clause-18 which states that the later settlement will supercede all the provisions of the earlier settlement.

14. In fact the term of reference and the relief claimed in the Claim Statement are quite contradictory also. The schedule of reference is on why the Respondent has not considered revision of wages of contract employees on par with the recommendations of the 6th Pay Commission. The direction sought in the Claim Statement is to extend them monetary benefits agreed upon as per the settlement dated 06.11.2010. In the absence of any specific reference to this effect there is not even necessity to consider the prayer made by the petitioner in the Claim Statement. I find that the petitioner is not entitled to any relief, considered from any angle.

In view of my discussions above the reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14th June, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri M. P. Sadasivam
For the 2nd Party/Respondent : MW1, Sri P. Palanisamy

Documents Marked:

On the Petitioner's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
Ext.W1	06.11.2010	Memorandum of Settlement arrived u/s 18(1) of the ID Act.
Ext.W2	04.10.2011	Representation sent by the petitioner union to the Respondent
Ext.W3	31.10.2011	Representation sent by the petitioner union to the Respondent
Ext.W4	25.05.2011	Petition filed by the Petitioner Union
Ext.W5	22.08.2011	Memorandum of Settlement arrived u/s 18(1) of the ID Act
Ext.W6	19.08.2014	Reply submitted by the Respondent Management

On the Management's side

<u>Ext.No.</u>	<u>Date</u>	<u>Description</u>
		Nil

नई दिल्ली, 29 जून, 2016

का.आ. 1373.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 26/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.06.2016 को प्राप्त हुआ था।

[सं. एल-11012/16/2002-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th June, 2016

S.O. 1373.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2003) of the Central Government Industrial Tribunal/Labour Court-II, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airport Authority of India and their workman, which was received by the Central Government on 23.06.2016.

[No. L-11012/16/2002-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI****Present :** Shri Harbansh Kumar Saxena**ID. No. 26/2003**

Sh. Sanjay II, S/o Sh. Kishan,
C/o 58, Tehsil Building Tees Hazari,
Delhi.

Vs.

Airport Authority of India, Rajeev Gandhi Bhawan,
President Safderjung Airport,
New Delhi-110037.

AWARD

The Central Government in the Ministry of Labour Vide Letter No. L-11012/16/2002 (IR(M) dated 24.02.2003 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of AAI, New Delhi in terminating the services of Sh. Sanjay II Ex-Sweeper w.e.f. 11.12.98 is justified? If not, to what relief the workman is entitled ?”

On 26.03.2003 reference was received in this Tribunal. Which was register as I.D No.26/2003 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 2.1.2004. Where-in he prayed as follows:-

“This Hon’ble Court/ Tribunal be pleased to pass an Award in favour of workman and against the management and the workman herein be directed to be reinstated with full back wages from 11.12.98 till the date of reinstatement, continuity in service along with other and complete consequential benefits and the cost of the present dispute be Awarded to the workman herein u/s 11 (7) of the I.D. Act.

Pass any other order /orders that this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.

Against claim statement management filed written statement on 01.11.2006. Through which management prayed as follows:-

“It is therefore, respectfully prayed that the claim of the workman may kindly be dismissed with cost and the reference be answered according in the interest of justice.”

No issue has been framed by Ld. Predecessor. He proceeded to decide the case on the basis of questions of determination mentioned in schedule of reference.

Workman in support of his case filed his affidavit alongwith annexed documents on 31.10.2007.

He was cross-examined at length by Sh. Priya Ranjan, Proxy Counsel , for the management and his examination-in-chief and cross-examination is as follows:-

I tender my affidavit as evidence which is Exh. WW1/A. Alongwith this affidavit , I rely on attendance cards issued for the month of October 1996 to January 1997, daily permit card for the period from 26.02.1996 till 22.08.1996, from 12.09.1996 to 10.02.1997 from 20.02.1997 to 05.12.1997, identity card dated 28.02.1997, another card issued in September 1997, affidavit given by the claimant to the management. Letter dated 23.4.1998 letter dated 11.12.1998, written representation dated 16.12.1998, representation dated 06.01.1999 forwarded by the union, passed by Civil Judge, order of Senior Civil Judge Granting appeal in my favour, order dated 09.01.2001 passed by High Court of Delhi, ESI Cards, claim statement filed before the Conciliation Officer and reply filed by the management thereto, which documents are Ex.WW1/1 to Ex.WW1/29. These documents may be read alongwith my affidavit.

I had not applied by nay application to the Airport Authority of India. No advertisement for vacancy was publish by Airport Authority of India. Vol. I was on duty on the basis of Judgment passed by on Hon'ble Supreme Court. I was working under a contractor and during the said period the Hon'ble Supreme Court of India passed an order granting us permanent job with the management. The said Judgment can be filed on record. My specific name is not mentioned as a party in that judgment but the said judgment was applicable to all employees /workers working with the contractor and working in the management. In that judgment of Supreme Court Airport of India was one of the party. It is wrong to say that Airport Authority of India was not a party in that case.

It is correct that management of Airport Authority of India has constitute a Scrutiny committee of Five members for submitting its report after verifying the status of the workman etc. I appeared before committee. It is wrong to suggest that I was not employee of Airport Authority after judgment of Supreme Court. It is correct that I was in case of management . Vol. I was told that I would be regularize after one year. No appointment letter was issued to me by Airport Authority. It is wrong to suggest that document Ex. WW1/1 to Ww1/4 are forge and fabricated. No other document relating to attendance is with me. It is wrong to suggest that I do not have any other attendance card because you have forged and fabricated only for attendance card for the month oct. Nov, Dec, 96 and Jan, 1997. I do not have the originals of WW1/5 as the original was deposited with the pass section of the management.

It is correct that there is nothing printed as Airport Authority of India. Vol. It is written by the Pen.

It is issued by that Bureau of Civil Aviation. The Government of India. It is correct WW1/5 to WW1/7 to same type of passes. It is wrong to suggest Ex. WW1/5 to WW1/7 were never issued to me. It is wrong to suggest that since I do not have the originals that is why they were never issued to me. I had not deposit the identity card with the department which is Exh. WW1/15 to WW1/16. It is wrong to suggest that WW1/15 is an entry pass and the same has been forged by cutting the word entry permit and writing it on the above Identity Card. Vol. The word Identity Card has been written by the issuing Authority that is the management.

It is correct that Ex.WW1/15 to WW1/16 were issued by the management of Airport Authority of India when I was taken into case of the management I had submitted the affidavit WW1/17 before the scrutiny committee but the same original copy was returned to me as there were some defects that I was told that fresh affidavit would be prepared. (OSR)

It is wrong to suggest that the original affidavit was never submitted by me . That is why the same is with me even today. It is correct that no date upto which alleged card was valid and is not mentioned , date of issuing is not mentioned. It is correct that the whitener has been applied on the right hand corner of the slip.

Vol. It has been applied by the contractor. It is wrong to suggest that the same is forged and fabricated.

I am filing the originals on record. It is correct that the contractor used to have pay bills . It is wrong to suggest that no payment has been paid by the contractor to me for the month of September to December 96. I cannot produce the said pay bills of the contractor as despite may asking. He did not give the copy of the same to me. The Signature of the holder on Ex. WW1/5 is not mine. The same is Exh. WW1/6 and there is no signature of holders of WW1/7. It is correct that the signature on Ex. WW1/5 and WW1/6 and the signature of WW1/17 on the affidavit are of two different persons. I do not remember whether I have filed a copy of ration card before the scrutiny committee. I am not sure but may be I have not filed the copy of Ration Card in this case.

I do not remember whether there were cutting in Ration Card or not.

Learned Counsel for workman objected to the question on the ground that the workman has already stated that he does not remember.

OBSERVATION

As to whether he has filed the Ration card before the Scrutiny committee or not the ration card has not been confronted to the witness by the Ld. Counsel of the management.

OBSERVATION

Learned Counsel for workman is creating hindrance since beginning of the cross-examination.

It is correct that five member scrutiny committed has called me inside and asked my name and father's name.

Ques. The members of the Scrutiny committed did not recognize you as having worked at the airport.

Ans. I do not remember whether such remark was passed or not.

Ld. Counsel of workman objected that neither the names of the members of the Scrutiny Committee has been disclosed and neither the report of the Scrutiny committee has been confronted to the witness by the Ld. Counsel for the management.

It is wrong to suggest that I was not on duty on 6.12.1996 .

It is wrong to suggest that even on the Contractor Roll I was not there on 6.12.1996. It is correct that many workers were not recognized as their documents were defected were not taken by the management of Airport Authority of India. It is wrong to suggest that after the Judgment of Supreme Court in Convince with the contractor I have filed forged and fabricated document and I have made a false claim. It is wrong to suggest that I have making false statement and I have filed false claim for obtaining job from the management of AAI and I am deposing falsely. I am married. I have two children. They are studying . One is eight and the other in the third. On their studies three thousands are spent. Since I have not been engaged by the AAI I am doing labour lobs /white washing jobs and also driving Auto Riksha for 3 or 4 months in a year. I have no driving license for Auto Riksha and Motor cycle.

Several opportunities were given to management to adduce its evidence in this oldest ID. but management failed to adduce its evidence. Then this Tribunal was compelled to close the evidence of management. Thereafter this Tribunal on 1.3.2016 closed the evidence of management.

I have heard the arguments of Ld.A/R's for the parties at length and perused the pleadings of evidence of workman on record.

Question of determination No.1 in schedule of reference is as follows:-

“Whether the action of the management of AAI, New Delhi in terminating the services of Sh. Sanjay II Ex-Sweeper w.e.f. 11.12.98 is justified?”

According to which burden of proof to prove it lies on management but in the instant case management adduced it's no evidence. Moreover nothing could be extracted out in cross-examination of WW1. Which may be harmful to claimant and favorable to management. In these circumstances question of determination no.1 is liable to be decided in favour of workman and against management. Which is accordingly decided. Question of determination no.2 relates to relief to which workman is entitled. It is proved fact Sanjay II Ex-Sweeper was employed as contractual employee on Feb, 1996.

It is also proved fact that management of Airport Authority of India, New Delhi terminated the services of Sanjay II ex-sweeper w.e.f 11.12.1998.

Now, it is to be determined to what relief workman is entitled?

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme court on the point of reinstatement and grant of back wages. Which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013)II LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000/-(Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus “the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded.” In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus,” grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic.”

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a Contractual Worker, thus, Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to Workman/Claimant by Management after the expiry of period of limitation of available remedy against this Award. That will meet the ends of justice.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided.

Award is accordingly passed.

Dated:-02.05.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 29 जून, 2016

का.आ. 1374.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई. एस.आई. हॉस्पिटल/विशाखा इंटरप्राइजेज के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 98/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.06.2016 को प्राप्त हुआ था।

[सं. एल-15011/3/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 29th June, 2016

S.O. 1374.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ESI Hospital/Vishakha Enterprises and their workman, which was received by the Central Government on 23.06.2016.

[No. L-15011/3/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

ID. No. 98/2015

The General Secretary,
Rashtriya Rajdhani Shetra Engg. & Gen. Maz. Union,
C-139, Karampura,
New Delhi - 110015

Vs.

The manager,
ESI Hospital,
Sector-15, Rohini,
New Delhi-110085.

The Manager,
M/S Vishakha Enterprises,
30/42, Street No.8, Main Road,
Opp, Andhra Bank, Vishwas Nagar, Shahadara
Delhi-110032.

AWARD

The Central Government in the Ministry of Labour Vide Letter No:- 15011/3/2015(IR)(M) dated 06.05.2015 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of ESI Hospital /Vishakha Enterprises in terminating the services of Smt. Maya W/o Sh. Jai Prakash . Ex-House Keeper w.e.f 01.01.2013 is justified or not? If not, what relief will be given to the workman and from which date?”

On 07.07.2015 reference was received in this Tribunal. Which was register as I.D No.98/2015 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 28.08.2015.

Through which workman Smt. Maya Ex-housekeeper prayed for her reinstatement alongwith all back wages etc. After service of respondent has not filed their written statement nor paid cost imposed on them. They adopted dormancy in filing of written statement . So after affording sufficient opportunity to file written statement I closed the right to file written statement on 29.02.2016.

Then case proceeded ex-parte against management on 29.02.2016. I fixed 16.03.2016 ex-parte evidence of workman to Smt. Maya filed her affidavit in her evidence which was tendering by her on 16.03.2016. Her cross-examination was marked nil as case proceeded ex-parte against management.

Workman Smt. Maya filed written argument on 30.3.2016. Then I reserved the award. I perused the question of determination mentioned in schedule of reference, pleadings and evidence of workman and written arguments of workman. Smt. Maya Ex-House keeper.

Question of determination No. 1 mentioned in schedule of reference is as follows:-

“Whether the action of the management of ESI Hospital /Vishakha Enterprises in terminating the services of Smt. Maya W/o Sh. Jai Prakash , Ex-house Keeper w.e.f 01.01.2013 is justified or not?”

Burden of proof to prove question of determination no.1 lies on management. In the instant case respondent/management failed to file their written statement and adduce their evidence nor they cross-examined the WW1.

Hence question of determination no. 1 liable to be decided in favour of workman and against management.

Moreover uncontroverted pleadings and ex-parte evidence of workman Smt. Maya Ex-housekeeper as well as her uncontroverted written arguments. Question of determination No.1 is liable to be decided in favour of workman Smt. Maya, Ex-housekeeper and against management. Which is accordingly decided.

Question of determination no. 2 mentioned in schedule of reference is relating to relief to workman Smt. Maya, Ex-housekeeper. As question of determination No1 has already been decided by me in her favour . So she is entitled to relief as per settled law of Hon’ble Supreme Court on the point of reinstatement and grant of back wages. Which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013)II LLJ 141 Hon’ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000/-(Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon’ble Supreme Court held thus “the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded.” In catena of Judgments, Hon’ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon’ble Supreme Court held thus,” grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic.”

Workman of the instant case was not appointed by following due procedure and as per rules. She had rendered service with the respondent as a ex-housekeeper, thus, Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to Workman/Claimant by Management after the expiry of period of limitation of available remedy against this Award. That will meet the ends of justice.

Reference is liable to be decided in favour of workman and against management. Which is accordingly decided.

Award is accordingly passed.

Dated:-02.05.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1375.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 15/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/451/2000-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1375.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 15 of 2001) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-20012/451/2000-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 15 of 2001

Employers in relation to the management of Bastacolla Area, M/s. BCCL

And

Their workman

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Shri S.K. Behra, Asstt. Manager

For the workman : None

Industry : Coal

Dated 3/05/2016

AWARD

By Order No.L-20012/451/2000-IR (C-I), dated.17/01/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bastacolla Area of M/S Bharat Coking Coal Limited in not accepting the date of Birth of Sri Pankaj Kumar Verma, Attendance clerk, kuya Colliery as 03.04.1945 as per the matriculate certificate and superannuating him w.e.f. 01.02.99 is justified, correct and legal ? If not, to what relief the workman is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman, Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1376.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 03/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/75/2013-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1376.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 03 of 2014) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-20012/75/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947

Ref. No. 03 of 2014

Employers in relation to the management of Koyla Bhawan, M/s. BCCL

And

Their workman

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : Shri N.M. Kumar, Advocate

For the workman : Shri S.C.Gour, Advocate

State : Jharkhand

Industry : Coal

Dated 25/05/2016

AWARD

By Order No.L-20012/75/2013-IR (CM-I), dated 03/01/2014, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

“Whether and justified the action of the management of Koyla Bhawan of BCCL in not regularising Shri A.C.Trigunait, Clerk Special Grade in the post of Office Superintendent Is fair and justified? ? To what relief the concerned workman is entitled to ?”

2. The case is received from the Ministry of Labour on 16.01.2014. After receipt of reference, both parties are noticed. The workman files their written statement on 03.02.2014. The management files their written statement -cum-rejoinder on 02.09.2014. And thereafter the Sponsoring Union files their rejoinder & document and examined himself as witness.

3. The short point to be decided in the reference case is whether the workman is to be regularised in the post of Office Superintendant from 23/12/2012 or not. .

4. The workman files documents marked as W-1 to W-11, some Office order as well as many Office notes are marked.

5. The case of the workman as submitted in written statement that after appointment in 1971 by the erstwhile owners of East Katras Colliery Ltd, the workman continued to work in BCCL, after nationalization of Mines on 01.05.1972. The management promoted the workman time to time from clerical Gr-II to Spl. Grade in the year 2010 on the basis of qualification.

6. It is further submitted by the workman that the workman posted in the man power and recruitment, division of Koyla Bhawan initially as Spl. Grade Clerk and taking job of Office Superintendant in MP & R Division of BCCL HQ at Koyla Bhawan, and authorities issued certificate to the concerned workman indicating designation of the workman

as Office Superintendent of MP&R Division. Hence the workman is entitled to grade A & T.A Sup with post of Office Superintendent after 6 months from the date of joining MP & R division of M/S BCCL w.e.f June 2011.

7. On the other hand, the case of the management that the concerned workman was permanent employee and lastly he was posted at MP& R Deptt. w.e.f 24.12.2010. but he never worked as office Superintendent in MP&R division of Koyla Bhawan BCCL and he was superannuated from the service of the company w.e.f. 31.08.2013 as Spl. Grade Clerk.

8. It is further submitted by the management that as per relevant cadre scheme, the minimum experience of 5 years is required in clerk Special Grade for promotion to next higher Grade of Office Superintendent T & S Grade A. The promotion of next higher grade is subject to fulfillment of eligibility norms as per cadre scheme but he had not fulfilled the eligibility of norms of cadre scheme. Accordingly the demand of workman for regularization as Office Superintendent is neither legal nor justified.

9. The workman submitted that, he has been working as office superintendent from 23.12.2012 and filed note sheets of BCCL management, performed tour etc. in that capacity, claims for regularization in BCCL. It appears that the workman was engaged as Office superintendent performed tour in that capacity which was duly approved by BCCL management. But management counsel submitted that the workman though performed duty of office superintendent, actually he was not promoted nor had eligibility to be promoted to the post of Office Superintendent.

10. On perusal of all document marked as W-1 to W-11, the post of workman is indicated as Office Superintendent and all document signed from many higher officer. Now in my opinion, Since the management engaged him in the post of Office Superintendent, he is to be regularized in the post of Office superintendent.

11. Considering the facts and circumstances of this case that the action of the management of Koyla Bhawan of M/S BCCL in not regularising Shri A.C.Trignait, Clerk Special Grade in the post of Office Superintendent is not fair, Hence it is ordered to regularise the workman in the post of Office Superintendent without any back wages. He be given his retirement dues or arrear, if any in the initial scale of Office Superintendent

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1377.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 167/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/80/1994-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1377.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 167 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-20012/80/1994-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 167 of 1994

Employers in relation to the management of Moonidih Project of M/s. BCCL

And

Their workman

Present : Sri R. K. Saran, Presiding officer

Appearances:

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated 09/06/2016

AWARD

By order No. L-20012/80/1994-IR (C-1) dated 25/27-07-1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Moonidih Project of BCCL, P.O. Moonidih, Dist. Dhanbad in dismissing Shri Rohan Napit T.No. 7395 from service of the company w.e.f 17.06.93 is justified? If not, to what relief the workman is entitled to?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1378.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 175/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/221/1999-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1378.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 175 of 1999) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-20012/221/1999-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD**

In the matter of reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 175 of 1999

Employers in relation to the management of Swang Colliery of M/s. CCL

And

Their workman

Present : Sri R. K. Saran, Presiding officer**Appearances:**

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri D. Mukherjee, Advocate

State : Jharkhand

Industry : Coal

Dated 06/05/2016

AWARD

By order No. L-20012/221/1999-IR (C-1) dated 03/11/1999, the central Government in the Ministry of Labour has, in exercise the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Swang Colliery of M/s. CCL in not regularisation shri Deo Narayan Rabidas Cat-II mazdoor as Driver Cat-V is legal and justified? If not, to what relief the concerned workman is entitled?”

2. After receipt of the reference, both parties are noticed. Both parties appeared. But appearing for certain dates, Ld Counsel for the workman/Sponsoring Union submits that workman is not interested to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1379.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 193/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/221/1993-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1379.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 193 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-20012/221/1993-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 193 of 1994

Employers in relation to the management of Bhatdee Colliery of M/s. BCCL

And

Their workman

Present : Sri R. K. Saran, Presiding officer**Appearances:**

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated 10/06/2016

AWARD

By order No. L-20012/221/ 1993 /IR (C-1)) dated 25/28-07-1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bhatdee Colliery of BCCL, P.O. Moonidih, Dist. Dhanbad in dismissing Shri Hari Deswali, Trammer w.e.f 11.06.91 is justified? If not, to what relief the concerned workman entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1380.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 269/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-20012/390/1993-आईआर (सीएम -I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1380.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 269 of 1994) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-20012/390/1993-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD**

In the matter of reference U/S 10(1) (D) (2A) of I.D. Act, 1947

Ref. No. 269 of 1994

Employers in relation to the management of Dugda Coal Washery of M/s. BCCL

And

Their workman

Present : Sri R. K. Saran, Presiding officer

Appearances:

For the Employers : Shri U.N. Lall, Advocate

For the workman : Sri D. Mukherjee, Advocate

State : Jharkhand

Industry : Coal

Dated 09/06/2016

AWARD

By order No. L-20012/390/ 1993 /IR (C-1)) dated- Nil, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of the chief General Manager, Dugda coal Washery of M/s. BCCL P.O. Dugda, Dist-Bokaro in denying employment to the dependent of Shri R.M. Pathak, Welder L-6 is justified? If not, to what relief is the concerned workman entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, Ld. Counsel for the workman submits that workman is not interested to contest the case. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 जून, 2016

का.आ. 1381.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डी.पी.एस. (ई.) प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 2/22 ऑफ 2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-11012/1/2010-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th June, 2016

S.O. 1381.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 2/22 of 2010) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Duty Free Shop (I) Pvt. Ltd. and their workmen, which was received by the Central Government on 30.06.2016.

[No. L-11012/1/2010-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT :

M. V. DESHPANDE, Presiding Officer/Judge

REFERENCE NO. CGIT-2/22 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DFS (INDIA) PVT.LTD. DUTY FREE SHOP

The General Manager
DFS (India) Private Ltd., Duty Free Shop
2C Air India Arrival Lounge
Chhatrapati Shivaji International Airport
Sahar, Andheri
Mumbai-400 066.

AND

THEIR WORKMEN

Shri Nandkumar G. Chavan
M-906, Bhoomi Breeze
Raheja Estate
Kulupwadi
Borivali (E)
Mumbai 400 066.

APPEARANCES:

FOR THE EMPLOYER : Mr. R.V. Paranjpe & Mr. Sundeep Puri, Advocates

FOR THE WORKMAN : Mr. N.G. Kankonkar, Advocate

Mumbai, dated the 25th May, 2016

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-11012/1/2010-IR (CM-I), dated 17.02.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Duty Free Shop (India) Pvt. Ltd., Mumbai in terminating ShriNandkumar G. Chavan, Warehouse Assistant from the services w.e.f. 15.05.2009 as contended by the workman concerned is justified and legal? ii)To what relief is the workman concerned entitled?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed his statement of claim at Ex-4. According to him, he was employee of the first party company since 28/03/2008. He was confirmed in the service from May 2008. His duties were to arrange for the airport entry pass for DFS employees, visitors to the duty free shop like supplies, depositing telephone bills etc. He was performing his duties manually and of clerical nature. He was not doing any supervisory or administrative work. According to the second party workman he was working with the first party and his service was clean, spotless, unblemished and to the entire satisfaction of his superiors. According to him on 14/10/2008 Mr. Vijay Patel, Country Head Manager of the first party and Mr. Raja, Manager of loss and prevention department asked the workman and his colleague Samir Sawant not to attend their duties with immediate effect and compelled to surrender their airport entry pass as to restrain them from doing their regular work. No reason was given to the second party as to why he was suspended till further orders. They paid him salary of October 2008. From the month of November and December the first party paid some amount to the second party as subsistence amount. Neither show cause notice was issued, nor any charge sheet was served on the second party. He was not given an opportunity to give any explanation. The first party all of a sudden terminated the services of the second party by their letter dt. 15/05/2009. The second party approached to their union. The union wrote letters to the first party. As they did not give any response, the union made a complaint to the Labour Commissioner (C). As conciliation failed, as per the report of ALC (C), the Labour Ministry sent the reference to this Tribunal. According to the workman the first party dismissed him from services illegally. Therefore he prays that the order of dismissal be quashed and set aside. He also prays that he be reinstated in the service of the first party with full back wages from 15/05/2009. He also prays that pending hearing, the first party be directed to take the second party in the employment and allow him to do his regular work.

3. The first party resisted the statement of claim vide their written statement at Ex-7. According to them, the second party is not ‘workman’ as defined under Sec 2 (s) of the Industrial Disputes Act. He was doing the job of supervisory and administrative nature. Therefore the reference is not maintainable. The second party is guilty of suppressing the true facts hence he is not entitled to any relief. His services were terminated simpliciter vide letter dt. 15/5/2009. The action of the management is legal, proper and justified. The second party was appointed as Warehouse Assistant and was predominantly performing duties of administrative nature. On 16/09/2008 workman and Mr. Sameer Sawant made an attempt to commit theft/transfer 12 bottles of Johny Walker Black Label from 2C Departure to 2C arrival warehouse without any record. While removing the bottles Ms. Neha Patil, Sales Associate asked them where they were taking the stock and also told them that without proper billing they cannot remove the stock. The workman told her that there was some stock taking activity at arrival section and therefore they were transferring the stock and have removed 12 bottles of JW Black Label. Ms. Neha Patil reported it to Duty Security Guard, Mrs. Jayashree Save. She enquired with workman and Mr. Samir Sawant. They told her that they were taking out the bottles as per the instructions of Mr. Pai. Ms. Jayashree Save informed the incident to another security superior Mr. Dinesh Karakesia. When he enquired with Ms. Jayashree Save she told that the workman and Mr. Samir Sawant told her that money has been handed over to Mr. Pai. Security Supervisor informed the incident to Mr. Pai and then to L.P. & Custom Manager. On the same day at about 8.00 p.m. the workman was spotted by one Sales Assistant, Mr. J. Dewalekar exiting the 2 B arrival gate. The workman was carrying one carry bag in his left hand, his usual office bag in his right hand and a Johny Walker backpack bag on his back. He was unable to walk properly due to the weight of the bags he was carrying. The backpack of Johny Walker was the same being given as GWP with JW bottles purchased by customers at DFS.

4. From 7/10/2008 to 14/10/2008 there was a full-fledged inquiry conducted by Director, Talent Management, Singapore Raja, Shri Khan- Loss Prevention Manager Singapore Vispi Patel- CEO India Viren Ahuja – Joint venture Partner – Flamingo. During the inquiry number of people were interviewed by the committee and it was concluded that Mr. Sunil Raisinghani the then Product Sales Manager, Mr. Prasanna Pai, Loss Prevention Customs Manager, Sameer Sawant and the workman were involved in the misappropriation of liquor and fully involved in the irregularities of custom compliances as well as theft of liquor from various locations. Mr. Raisinghani and Pai tendered their resignations. Mr. Sameer Sawant was also terminated. He had approached Labour Commissioner for conciliation. However later on he also resigned at his own. The workman also approached Assistant Labour Commissioner. The workman was found guilty of mischief of theft and misappropriation therefore his services were terminated. After termination of the services the second party is gainfully employed and earning. Hence he is not entitled to any relief. Therefore the first party prays that the reference be rejected with cost.

5. This Tribunal has passed Award on 12.11.2013 and partly allowed the Reference and declared that the dismissal of the workman, Second party was illegal. First party was directed to reinstate the second party workman in services along with 60% back-wages, continuity in service with all other consequential benefits.

6. First party challenged the Award before the Hon'ble High Court in Writ Petition No. 7303/2014. The Hon'ble High Court has confirmed the findings of the Tribunal to Point No. 1 and held that second party workman is 'workman' as contemplated under Section 2(s) of I.D. Act. However the Hon'ble High Court has observed that this Tribunal has not deduced the evidence that was led before it and remitted the reference to this Tribunal for deciding the issue as to whether First Party has proved the misconduct on the basis of evidence that was recorded before it.

7. Both the parties have not adduced evidence after the reference is remitted to this Tribunal for deciding whether first party has proved misconduct on the basis of evidence. So the evidence led by First Party is only in the form of deposition of Mr. Dewalekar (Ex-52) and then there is evidence of Second Party workman.

8. I have heard the arguments advanced by learned Advocate Mr. N.G. Kankonkar, for the Second Party workman. Perused notes of arguments Ex-74. I have also heard the arguments advanced by learned Advocate Shri Paranjpe for the First Party and perused written notes of arguments Ex-76.

9. Following are the issues for my determination. I have recorded my findings thereon for the reasons to follow.

<u>Issues</u>	<u>Findings</u>
1. Whether second party is 'workman' as contemplated under section 2(s) of ID Act?	Yes
2. Whether the first party has proved the misconduct of second party workman on the basis of evidence?	No
3. Whether termination of Second party workman is legal and valid?	No
4. Whether the workman is entitled to any relief Sought for?	As per final order
5. What order?	As per final order

REASONS

Issue no. 1

10. Herein the fact is not disputed that the second party was the employee of the first party. He was appointed as Ware-house Assistant and was confirmed in the service. According to the second party he was doing the work manually as well as clerical nature. Therefore according to him he was a 'workman' as defined under Sec 2 (s) of the I.D. Act. As against this according to the first party, the second party was predominantly performing the duties of administrative in nature. Therefore he does not come within the definition of 'workman'. The duties of Ware-house Assistant are given by the first party in their written statement at Ex-7. However no duty given therein is of supervisory or administrative in nature. His few duties given in the duty list are as follows:

- Ensure merchandise is accurately checked, sculled and labelled correctly against appropriate work.
- Ensure orders are checked and packed against the correct paper work.
- Identify and rotate old stock.
- Assist in all departments within the DC when requested by management in unloading and loading of containers, picking and packing orders, receiving, booking and checking of inwards stocktaking.
- Be responsible for housekeeping of the entire bond stock areas (including surrounding grounds).
- Assist stock inventory controller with aged stock, discrepancies stock takes etc.
- Treat all management and fellow team members with respect to support a team environment.
- Perform any other duties as requested in a diligent and consequence manner.
- Health and safety
- Take all practical measures to minimize, isolate or eliminate hazards in the work place. Ensure that work place is safe and behave in a manner that does not impose any risk to health and safety.
- Comply with reasonable instructions from any supervisor or authorized representative of the company regarding health and safety matters.
- Actively participate in the Emergency Response procedures.
- Report any accidents, injuries of hazards in the workplace to management.
- Actively support and comply with DFS CHS policies and procedures.

- Systems and procedures.
- Comply with company policy and procedures relating to security and stock control.
- Comply with all security audit requirements.
- Actively support and comply with all health and safety policy procedures and regulations.
- Adhere to company dress standards and punctuality.
- Uphold the highest standard of professional grooming and presentation at all times etc.

11. So far as this issue is concerned, it is finding of fact that Second Party workman was not performing any administrative or managerial duties. His duties were of manual and clerical nature. He was designated as Ware-House Assistant and his pay is higher, he has no independent power to take decision. His duties were to check stock, scull, label correctly, ensure the orders are checked and packed against correct paper work, identify and rotate old stock, assist in all departments. He was also supposed to assist stock inventory controller with aged stock. He was also supposed to perform any other work in a diligent and contentions manner. He was not empowered to take independent decisions. He was not authorized to bind the company by his decision. Considering his duties, it was considered that he is workman within the meaning of Sec 2(s) of I.D.Act.

12. This finding of fact is upheld by the Hon'ble High Court in Writ Petition 7303 of 2014. It has been observed that the finding to this issue cannot said to be perverse finding and the said finding is not contrary to the evidence on record. In view of that finding that the Second party is a workman is upheld and therefore this issue is answered in affirmative.

Issue No. 2 and 3:

13. In respect of termination of services, it is contended on behalf of first party that, the workman was involved in misappropriation of stock of liquor and in irregularities of Customs compliances, as well as theft of liquor from various locations. In the written statement it is contended that from 7.10.2008 to 14.10.2008 there was full-fledged inquiry conducted by the Director, Talent Management-Singapore, Raja, Shri Khan-Loss Prevention Manager, Singapore, Vispi Patel-CEO India, Viren Ahuja- Joint Venture partner-Flamingo. It is further contended that during inquiry number of people interviewed by the committee and it was concluded that Mr. Sunil Raisinghani the then Senior Product Sales Manager, Mr. PrasannaPai Loss Prevention and Customs Manager, the workman and Mr. Samir Sawant were involved in misappropriation of stock of liquor and fully involved in irregularities in customs compliances, as well as theft of liquor from various locations.

14. For, it is explicit from the evidence of Mr. KailashBhushan (Ex-42) that he was working as Vice-President in the Joint Venture Partner of First Party Company. Admittedly he is not employee of First Party. On going through his evidence it appears that his evidence is hearsay in respect of alleged incident of theft. Whatever stated by him is that on 16.9.2008 Mr. NandkumarChavan and Mr. SamirSawant were in their day shifts. They attempted to commit theft/transfer 12 bottles of JW Black Label from 2/CDeparture to 2C arrival ware-house without any record. According to them while removing the bottles from the shelves from 2C Departure, they were asked by Ms. Neha Patil (Where they weretaking the stock?). Ms. NehaPatil told them that without proper document they cannot remove stocks. That time Mr. NandkumarChavan replied that there was some stock taking activities at arrival section. That is why they were transferring the stock and they removed 12 bottles of JW Black Label from their shelves. So according to him this incident was told by Ms. Neha Patil to duty Security Guard Mrs. Jayashree Save who made inquiry to Mr. Nandkumar Chavan and Mr. Samir Sawant and that time Mr. Nandkumar replied that Mr.Pai instructed them to do so and they have given money to Mr. Pai.

15. He went on to say that Ms. JayashreeSave informed this incidence to Mr. Dinesh H. Karakesia and then Dinesh H. Karakesia informed the incidence to Mr. PrasannaPai then, LP & Customs Manager. According to him around 8.00 p.m. on that day Mr. NandkumarChavan was spotted by one of the Sales Assistant, Mr. JagannathDewalekar, while exiting 2B arrival gate. He saw Mr. NandkumarChavan with one carry bag in his left hand; his usual office bag in his right hand and Johnny Walker backpack bag on his back and that time Mr. NandkumarChavan was unable to walk properly due to weight of the bag he was carrying. This is precisely the evidence of this witness in respect of theft or misconduct.

16. There is no witness examined by the First Party who has allegedly seen the second party while committing alleged act of misconduct. First Party has not adduced evidence of Ms. NehaPatil, security guard, Mrs. Jayshree Save, Mr.Pai, Mr.Dinesh Karakesia and Mr.Jagannath Dewalekar.

17. Learned counsel for First Party submitted that there was full-fledged enquiry from 7.10.2008 to 14.10.2008 conducted by Director Talent Management-Singapore, Raja Shir Khan-Loss Prevention Manager, Vispi Patel-CEO, VirenAhuja-Joint Venture Partner-Flamingo and Second Party workman was present at the time of said enquiry, in

whose presence the statements of Ms. Neha Patil and Mrs. Jayshree Save, Mr. Dewalekar, Mr. Dinesh Karakesia have been recorded and memorandum of enquiry was prepared, which is the basic evidence to prove the alleged theft and misconduct of the workman?

18. In this respect Mr. Dewalekar appears to have stated in his statement that he saw the second party workman while carrying the bottles from Airport premises. As against this in the alleged statements of Mrs. Jayashree Save and Ms. Neha Patil, they appear to have stated that 12 bottles were brought back after 15 days. Mr. Dinesh Karakesia (Ex-51) appears to have stated that they have kept the bottles in bond ware-house. It appears therefore that there are material contradictions in so far statements of Mr. Dewalekar and those of Mrs. Jayshree Save and Ms. Neha Patil. It was therefore necessary for First Party to adduce evidence of witnesses before Tribunal, so that they ought to have subjected to cross-examination to find out the truth. As regards the statements before Inquiry Officer, their non-examination, in this respect goes to the root of matter.

19. It is pertinent to note that the alleged statements given by the employees, except that of Mrs. Jayshree Save (Ex-50), do not bear any date. The statement given by Mrs. Jayshree Save shows the date as 22.7.2010. The termination was effected on 15.5.2009; Statement of Claim was filed by Second Party on 5.5.2010. It shows that the statement of Mrs. Jayshree Save which is dated 22.07.2010 has been obtained, after the termination of services of second party workman and even after filing the Statement of Claim. Since other statements which are relied upon by the Inquiry Officer do not bear the date, it leads to the inference that the statements are afterthought. Therefore these statements cannot be accepted.

20. First Party has produced inquiry papers. Those papers also do not bear the date. Even then Learned Counsel for first party submitted that during enquiry second party workman was present and the other employees who were allegedly involved have given the signatures. According to him, that would show the conduct of the second Party/Workman who can be said to be guilty of misconduct.

21. It is not possible to countenance the view propounded by learned Counsel for the First Party. It is because the documents which are relied upon are self-contradictory. Suspension order dated 17.11.2008 issued to the second party workman, mentions that company was in process of completing the investigation. Whereas the alleged inquiry papers mention that, inquiry was conducted between 7.10.2008 to 14.10.2008. According to these documents the investigation was completed by 14.10.2008. If the investigation is completed by 14.10.2008 then the First Party would not have stated in the suspension order that the investigation was going on. This would again show that the alleged enquiry is after thought.

22. I say so because according to the evidence of Mr. Kailash Bhushan, security guard checks the employees and does the frisking and physical checking of the employee's belongings while they are leaving 2 C arrival office. After the duty free shop there is custom department's baggage hall where the custom officer on duty does the frisking of the employees and does the scanning of employee's belongings in the machine. After custom exit gate there is airport security (CISF) who does the frisking of employees going out and of their belongings. From the statements of witnesses allegedly made by them before Inquiry Officer, it appears that 12 bottles were brought back after 15 days. This sort of evidence if being taken into consideration, then it appears improbable that employee would take out the bottles out of airport premises as alleged.

23. Ld. Counsel for First party Shri Paranjpe submitted that this will be simple discharge on the ground that the Second party workman has lost the confidence and trust. His termination is legal especially when internal enquiry was held and the minutes of the meeting were held from 7.10.2008 to 14.10.2008 (Ex-48). He seeks to rely on the decision in case of **Tata Oil Mills Co. Ltd., reported in 1996 II LLJ Pg. 602 (SC 3J)** to submit that the form of order by which the employee's services are terminated, would not be decisive, Industrial adjudicator would be entitled to examine the substance of the matter and decide whether the termination is in-fact a discharge simplicitor or it amounts to dismissal which has put on the cloak of discharge simplicitor.

24. In that case (**Tata Oil Mills Co. Ltd.**) employee had been employed as a salesman on April 3, 1956, as a probationer and he was confirmed on November 5, 1956. On December 5, 1959, his services were terminated and he was informed that the appellant had lost confidence in him, and so, it had been decided to discharge him. In that case management had alleged that the termination of employee's services was not dismissal but was discharge simplicitor, and according to it, the discharge was justified by the terms of contract between the management and employee in Rule 40(1) of the Services Rules of employee. It is held that the test in such cases is to see whether the act of employer is bonafide or not? If the act is malafide, or appears to be a colourable exercise of the power conferred on the employer either by the terms of contract or by the standing orders, industrial adjudicator would examine the substance and would direct reinstatement in a fit case. In that case Labour Court has made definite finding in favor of employer that its action in terminating the services was not malafide and did not amount to victimization.

25. In the present case the facts are different and distinguishable. In suspension letter (Ex-22) dated 17.11.2008 it is mentioned that subsequent to certain serious allegations made against Second Party employee concerning his

involvement in breach of DFS Policy and Customs Regulations. Management is in process of completing investigation in the said matter.

26. In the written argument of the First Party employer (Ex-57), it has been contended that the inquiry was held in respect of allegations made against employee. It is mentioned in written statement about holding of minutes of meeting Ex-48. It appears that the management relied upon the letters (Ex-49, 50, 51, 52) to hold that the second party employee is involved in the incidence of theft. As seen Ex-49, 51 and 52 do not bear the date. It can be seen that these letters were obtained later on and it is in that circumstances even management has not adduced evidence of the concerned employees namely Ms. Neha Patil, Jayshree Save and others to substantiate the allegations. That would show that investigation/enquiry is malafide.

27. It is held in decision in case of **Tata Oil Mills Co. Ltd. (Supra)** that if act of employer is not bonafide and it is malafide, then the Court can examine the substance and not the form of standing order.

28. Hon'ble High Court has remitted the reference for deciding as to whether the employer (that is the petitioner in the writ petition) has proved the misconduct on the basis of evidence. In view of that the burden is on the first party employer to prove the misconduct of the employee. Even then Ld. Counsel for employer Shri Paranjpe submitted that the burden is on employee to prove malafide of the employer and seeks to rely on the following decisions-

1. Orissa Cement Ltd. V/s. Their workmen and Anr, 1960 II LLJ Page 91 (S.C.).
2. V. K. Raj Industries V/s. 1st Labour Court, Kanpur and Ors, 1981 II LLN Pg 498 (Allahabad HC).

Wherein it is held that the burden to prove is on the party who alleged malafide. Here in instant case the facts are quite different and distinguishable.

29. Ld. Counsel for Second Party workman seeks to rely on the decision in case of **Delhi Transport Co. V/s. DTC Mazdoor Congress 1991 AIR 101, 1990 SCR Supl. (1) 142** to submit that the termination of services of permanent employee without assigning any reasons and holding enquiry is arbitrary, unfair, un-just and un-reasonable and opposed to public policy and against the Principles of Natural Justice. On going through the termination order it appears that there is no mention in it that the second party employee was involved in the incident of theft or as such he has lost the confidence and therefore his services are terminated. However in the suspension order it is mentioned that subsequent to certain serious allegations made against Second Party employee concerning his involvement in breach of DFS Policy and Customs Regulations, Management is in process of completing investigation in the said matter. But then it appears that no enquiry was held by the management neither show-cause notice was issued to workman nor he was served with any charge sheet. Even the workman was not present on all the dates of alleged inquiry. He was not even asked to remain present on all the dates of alleged inquiry. These facts are admitted by the Management witness no.1 Mr. Kailash Bhushan in the cross-examination who has deposed at Ex-42. That would show that there was breach of Principles of Natural Justice. On that ground it can be observed that the termination is illegal.

30. Even then the Ld. Counsel for first party employer submitted that in the written statement it is contended that there was full-fledged inquiry held by the high officials and Ex-48 is the copy of minutes of the meetings held on 7.10.2008 to 14.10.2008 in respect of the workman. From these minutes of meetings Ex-48, it is revealed that Committee Members interviewed some employees and found that 4 people were involved in misappropriation of stocks of liquor and were fully involved in irregularities of Custom compliances as well as theft of liquor from various locations and they recommended the termination of services of the workmen. Exhibit-49 is the report of Ms. Neha Patil to HR Manager. Exhibit- 50 is the statement of witness Mrs. Jayashree Save. Exhibit- 51 is the statement of Mr. Dinesh H. Karakesia working as Supervisor. Exhibit- 52 is statement Mr. Jagganath Dewalekar. As seen earlier the statements Ex-49, 51 and 52 do not bear the dates. Even it appears that statements of these witnesses were neither recorded in presence of workman nor they were offered for cross-examination.

31. Ld. Counsel Shri Paranjpe submitted that, in case of theft/forgery the services of employee can be terminated even without domestic inquiry. In support Ld. Counsel Shri Paranjpe resorted to decision in case of-

All India Institute of Medical Sciences V/s. O.P. Chauhan, & Ors 2007 (113) FLR Pg. 161 (Del. HC), wherein the Hon'ble Court in Para 14 of judgment observed that;

"It is not necessary that in every case where a person is involved in theft, forgery and where a criminal case is registered, the management has to hold an enquiry and then only terminate the services. The management can always terminate the services in terms of service conditions of an employee, for loss of faith and confidence, where the employee involved is handling sensitive post or a high degree of integrity and honesty is expected from him because of responsibilities."

32. In the case at hand it is alleged that the workman was involved in misappropriation and theft cases. However no criminal case is registered against him. Therefore the ratio laid down in this ruling is not attracted to the set of facts of the present case.

33. Ld. Advocate for First Party Company further submitted that as the workman was caught removing stores items, he was rightly dismissed by management. He seeks to rely on the decisions in case of;

(1). Escort Ltd. (tractor Div) V/s. Labour Court (P&H) 1986 FLR 273.-

In that case the Labour Court had given finding of guilty of theft. In the circumstances Hon'ble High Court held that Labour Court cannot proceed to exercise jurisdiction under Section 11 A to water down quantum of punishment.

(2). Pfizer Ltd. V/s. Mazdoor Congress & Ors AIR 1996 SC 2618-

wherein temporary workman was found committing theft. His services were terminated and the Labour Court held that the management was not indulging in unfair labour practice.

34. The Ld. Advocate for first party management also submitted that admittedly workman has surrendered entry pass and even it has come in evidence that other co-workman namely Mr. Samir Sawant who was allegedly involved in case of misconduct had resigned. So according to the Ld. Counsel for management Shri Paranjpe, suggestion was given by the management in the cross-examination of employee and it has not been denied by him and that amounts to his admission of committing theft by the employee.

35. This submission is perverse and other way round. In his cross-examination the employee has specifically pleaded ignorance as regards the resignation given by Mr. Samir Sawant. Merely because suggestion was given to him in cross-examination to the effect that Mr. Samir Sawant has given resignation due to alleged involvement in theft case does not amount to admission of the employee concerned in respect of the fact as regards the alleged involvement of Mr. Samir Sawant in the said incident.

36. Even then Ld. Counsel for the management Shri Paranjpe submitted that earlier the Second party workman was working as Salesman and therefore it is not possible that he would have taken a job of Clerical nature. This submission is also not acceptable since the witness of the management himself has admitted that the second party workman was appointed as Warehouse Assistant. As such there is no suppression of facts by the second party workman.

37. Ld. Counsel for first party management Shri Paranjpe submitted that the second party employee was never supported by the Union, though he was the member of Bharitya Kamgar Sena. According to him union has admitted the Second party workman's act of theft and in that circumstances the termination of workman is legal and proper.

38. The submission is also not acceptable since it has come on record that second party workman met the union people and as such there is no evidence on record that the union people have stated about the involvement of Second party workman in incidence of theft.

39. The fact remains that neither workman was served with show-cause notice nor any charge sheet was served on him neither witnesses were examined in his presence nor cross-examination was offered. In short there was no inquiry as alleged and on the other hand workman was dismissed merely on the basis of report of the officials. Even the witness who has been examined by the management has no personal knowledge about the alleged misconduct of the second party employee.

40. In the light of above discussion I find that the first party management has not proved the alleged misconduct of second party workman on the basis of evidence led by it. In this back drop it needs no further discussion to arrive at the conclusion that the services of the second party workman were terminated illegally. Accordingly, I have answered the above issues as indicated against each of them, in terms of above observations.

Issue No. 4.

41. As the services of workman were terminated illegally, without any inquiry the Ld. adv. for the second party workman submitted that workman should be reinstated with full back wages. In support of his argument the Ld. adv. for the second party resorted to Apex Court ruling in **UPSRTC through its MD V/s. J.P. Mishra 2003 I LLJ 224**. In that case the order of termination was held rightly set aside by High Court as the rule of natural justice requiring issue of notice to the respondent to show-cause against the proposed action was not observed by the management. Therefore the workman therein was reinstated by the High Court with full back wages. The Hon'ble Supreme Court confirmed the order of reinstatement with modification in the order of back wages. In that case, full-fledged inquiry was held. After receipt of the report of the Inquiry Officer, show cause notice was not issued to the workman calling upon him to show-cause as to why action should not be taken against him. In the circumstances the Hon'ble Court upheld the order of reinstatement of the workman with partial back wages.

42. In the light of this ruling *Id. Adv.* for the second party workman **Shri Kankonkar** submitted that in the case at hand the services of workman were terminated without any charge sheet or inquiry. Therefore he should be reinstated with full back wages. The *Id. adv.* also resorted to the Division Bench ruling of Bombay High Court in **Taranjitsingh Bagga V/s. M.S.R.T.C.2008 (4) Bom C.R. 330**. In that case the Labour Court and Industrial Tribunal had given findings in respect of the inquiry that it was not fair and proper as there was violation of Principles of natural justice, as no opportunity was given to the workman to cross-examine the two management witnesses. Therefore the workman therein was reinstated with full back wages. In writ before single judge the order of directing payment of back wages was set aside. In writ appeal the Hon'ble Division Bench of Bombay High Court examined the facts and circumstances and in the light of various decisions of Apex Court, the Hon'ble High Court in Para 7 of the judgment observed that;

"In view of this, in our view, it was not necessary for the Ld. Judge to interfere with the findings of both the Courts below that the appellant was entitled to full back wages upon his reinstatement."

43. *Ld. Counsel* for the second party **Shri Kankonkar** also seeks to rely on the decision in case of **Jasmer Singh V/s. State of Haryana 2015 (0) AIJEL-SC 52** to submit that;

"When the termination is void ab initio, workman is entitled to full back-wages."

44. *Ld. Counsel* for the second partyworkman also seeks to rely on the decision in case of **Anjali Dilip Doke V/s Triveni Dudha Vitaran Sahakari Sanstha Ltd. & Ors. 1991 II CLR 416** to submit that;

"Once having come to the conclusion that the termination of the services of the petitioner was not in accordance with law and also not justified, there was no alternative but to grant reinstatement."

45. On the other hand *Ld. Adv.* for the first party management submitted that burden was on the workman to prove that he was unemployed and back wages should not be awarded, unless the employee shows that he was gainfully employed. In support of his argument *Id. advocate* resorted to decision in case of **Pawan Kumar V/s. HP State Industrial Corporation & Anr. 2007 III LLJ 281 HP** wherein the Hon'ble High Court in Para 2 of the judgment observed that;

"When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if, he places materials in that regard, the employer can bring on record material to rebut the claim."

46. The *Id. adv* for the first party **Shri Paranjpe** also resorted to **Apex Court ruling in Kendriya Vidyalaya Sanghtan & Anr V/s. S.C. Sharma AIR 2005 SC 768** wherein the Hon'ble Court has laid down the same principle as law of the land.

47. *Ld. Counsel* for First party management **Shri Paranjpe** submitted that if there is a loss of confidence compensation would be only relief. He submitted that where the employer loses confidence in its employee, who is discharging office of trust of confidence. There is no justification for directing his reinstatement. When there is a loss of confidence, compensation would be the only adequate relief.

48. In case of **Air Lanka Ltd. V/s. John William Nathan and Anr.33----- 1991 I LLJ Pg. (62 FLR 953)** it is held that;

"Reinstatement had not been considered, as either desirable or expedient in certain cases where there had been strained relations between the employer and employee, when the post held by the aggrieved employee had been one of trust and confidence, though the order of dismissal was unsustainable, owing to some infirmity in the impugned order and in case where it was felt that it would not be desirable or expedient to direct reinstatement, the workman may be provided monetarily by awarding compensation instead of reinstatement for loss of future employment."

49. In the case cited *supra*, it is finding of fact that the petitioner committed theft of the article in question. The charge was held proved and finding in that behalf was not disturbed. But then it was considered that the past record does not constitute sufficient basis for imposing the drastic punishment of dismissal and that the offence which held proved against the petitioner is only a trivial act of misconduct and consequently came to the conclusion that the punishment imposed on the first respondent is grossly disproportionate to the gravity of the misconduct committed by the first respondent and it is clearly excessive. The Hon'ble High Court has observed that the Tribunal has to take note of the fact that the first respondent was awarded censure and warnings on earlier occasions and ultimately was dismissed from service on the charge of misconduct for having committed theft. In that circumstances, it was considered that facts and circumstances ought to have been considered to decide as to whether respondent should be reinstated or be adequately compensated in lieu of reinstatement.

50. So far as present case is concerned, it can be said that the services of the second party employee has been terminated without any inquiry. Even the second party employee was working as Warehouse Asst. and that he was not holding any post of confidence to entail any security risk. Even First Party management has not proved by evidence the alleged misconduct and his involvement in the alleged theft. There is no record to show that previously he was censured of alleged misconduct. Considering the facts of the present case, I think this is a fit and proper case where the reinstatement should be awarded.

51. Ld. Counsel for the Management Shri Paranjpe seeks to rely on the decisions in case of **Kanhaiyalal Agarwal and Other V/s. The Factory Manager & ors, 2001 AIR (SC) pg 3645** and **Punjab National Bank and Anr V/s. Shri Dugra Dutt Sharama & Ors. 2006 LIC, Vol. (4) Pg. 3760 (HP H.C.) / 2006 (2) Shim LC 316** to submit that compensation can be awarded instead of the back wages and reinstatement cannot be relief where the employer loses confidence in employee.

52. In the present case. It is not the pleadings of the employer that the employer has lost the confidence in the employee, what must be pleaded and proved to invoke the principle is that-

- (I) the workman is holding a position of trust and confidence
- (II) by abusing such position, he commits acts which results in forfeiting the same;
- (III) To continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.

53. These are the observations which I borrow from the decision in case of **Kanhaiyalal Agarwal and Other V/s. The Factory Manager & ors, cited supra**. In this case also there is neither pleading nor it is proved that the workman has lost trust and confidence. In view of that I also find that this is fit case where the reinstatement should be awarded.

54. In this respect Id. adv. for the first party management submitted that the workman was working as RTO Agent. Suggestion was also given to him to that effect in his cross-examination. The suggestion has been denied by workman. Neither workman has placed on record any material nor management led any evidence to show that workman is working as RTO agent and he is gainfully employed. But in this respect it can be observed that workman is earning something in order to make livelihood. It may not be sufficient or equal to his pay. The workman may have suffered a lot as he lost his job and he required to fight the legal battle. This short of evidence I think it proper to award 60% of the total emoluments from date of termination of his services till the date of his reinstatement. I think it proper to reinstate him with 60% back wages, continuity of service and all other consequential benefits. Accordingly I partly allowed the reference and proceed to pass the following order.

ORDER

The Reference is partly allowed with no order as to cost.

1. The order of dismissal of second party from services is hereby declared illegal and the same is set aside.
2. The first party is directed to reinstate second party workman in service with 60% back wages, continuity in service with all other consequential benefits.

Date: 25.05.2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1382.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 62/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.07.2016 को प्राप्त हुआ था।

[सं. एल-22012/125/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1382.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 01.07.2016.

[No. L-22012/125/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 13th day of August, 2014

INDUSTRIAL DISPUTE No. 62/2012

Between:

The General Secretary,
(Sri Bandari Satyanarayana),
Singareni Telugu Nadu Trade Union Council (STNTUC),
H.No. 5-295, Indranagar, Opp. Bus Stand,
Mancherla – 504208.
Adilabad District

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bellampally Area, Goleti Township-504292.
Adilabad District

...Respondent

Appearances :

For the Petitioner : Sri S. Bhagawanth Rao, Advocate

For the Respondent : Sri S.M. Subhani, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/125/2012-IR(CM-II) dated 3/10/2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

“Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Bellampally Area, Goleti Township, Adilabad Distt., in terminating the services of Sri Perukala Chandraiah, Ex.Gen. Mazdoor, MKV-5 Inc., of Bellampally Area, with effect from 9.10.1997 is justified or not? To what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 62/2012 and notices were issued to the parties concerned.

2. Case is posted for filing of claim statement.

3. At this stage, Petitioner called absent. Claim statement not filed. In spite of giving fair opportunity again and again Petitioner is not taking any interest in the proceedings and is not making any claim. In the circumstances, taking that Petitioner got no claim to be made, ‘Nil’ Award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Sri J. Vijaya Sarathi, UDC and corrected by me on this the 13th day of August, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1383.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीबीएमबी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, चंडीगढ़ के पंचाट (संदर्भ सं. 26/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 01.07.2016 को प्राप्त हुआ था।

[सं. एल-23012/03/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1383.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of M/s. Bhakra Dam, BBMB and their workmen, received by the Central Government on 01.07.2016.

[No. L-23012/03/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.**

Case No. ID No.26 of 2015

Reference no. L-23012/03/2015-IR(CM-II) dated 14.12.2015.

General Secretary, BBMB Workers Union, Nangal,
District Ropar-Punjab

...Workman

Versus

1. The Chief Engineer, Bhakra Dam, BBMB,
Nangal Township, district Ropar (Punjab)

...Respondent

Appearances :

For the Workman : None

For the Management : Shri S.K.Goyal

AWARD

Passed on: - 14.06.2016

Government of India Ministry of Labour vide notification No. L- 23012/03/2015-IR(CM-II) dated 14.12.2015 has referred the following dispute to this Tribunal for adjudication:

“Whether the BBMB Workers Union, Nangal being the minority union in the establishment of BBMB(I.W.) Nangal has the right to espouse the cause of the workman of BBMB(I.W.), Nangal by way of raising an industrial dispute or not?”

Whether the demand of BBMB workers Union, Nangal from the management of BBMB, are legal, fair and justified? If yes, what relief the union and the workmen are entitled to and from which date?”

2. Today the case is fixed for filling of claim statement by the workman/union. None appeared for the workman/union nor any claim statement has been filed. Shri S.K.Goel is present for the respondent. Already three opportunities have been given to the Union to file claim statement. It appears that the Union is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh

14.06.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 54/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.07.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1384.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of SCCL and their workmen, received by the Central Government on 01.07.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 13th day of June, 2016

INDUSTRIAL DISPUTE LC No. 54/2009

Between :

Sri Kamidi Sadanandam,
S/o. Odelu,
R/o Janagoan, V/o Ramagundam,
Mandal of Karimnagar District

...Petitioner

AND

1. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
Chennur-Incline, Chennur.
2. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Srirampur Area,
Post: Srirampur, Mandal: Mancherial,
Dist: Adialabad
3. The Managing Director,
M/s. Singareni Collieries Company Ltd.,(Admn.)
Kothagudem, Dist: Khammam

...Respondents

Appearances :

For the Petitioner : Sri S. Bhagawanth Rao, Advocate

For the Respondent : Sri S.M Subhani, Advocate

AWARD

Sri Kamidi Sadanandam who worked as badli filler (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents seeking for declaring the proceeding No.SRP/PER/13.008/4743 dated 5.10.2007 issued by the Respondent No.2 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as temporary badli filler on 25.3.2004 by Respondent No.1 on compassionate grounds in view of his father's death dated 23.4.1994. The Petitioner had put in 50 musters in 2004, 93 musters in 2005 and 49 musters in 2006 and 78 musters in 2007, but Respondent No.2 had terminated the services of the Petitioner on 5.10.2007 vide order No.SRP/PER/13.008/4743. The Petitioner has discharged his duties to the fullest satisfaction of his superiors till his removal. His father has got 20 years of qualified service and has got 10 years of service for superannuation, but with an intention to cause wrongful loss, Respondent No.2 has foisted a charge of absenteeism against the Petitioner under Sec.25.25 of the Standing Orders of the company and terminated the Petitioner from service and subsequently charge sheet No.CH.2/R.3/6-564 dated 14.3.2006 was served on the Petitioner for absenteeism during 2005. But he has improved his attendance during 2006, 2007 & 2008. The Petitioner has requested the management to pay "three lakhs in lieu of dependent employment as Petitioner's health is not good to work in underground mine" in the year 2004. But, he was compelled to accept the job and discharged his duties till his removal from service. But the Respondents has shown wrong figure of his attendance. It is stated that no fair and reasonable opportunity was given to him to represent the matter before the management and no opportunity was given to cross examine the management witnesses and no subsistence allowance was paid during the pendency of the enquiry. It is further stated that the enquiry conducted by the Respondents be declared as null and void. The Petitioner sent representation dated 18.8.2008 regarding his reinstatement into service but no reply was made from the side of the Respondents. It is also stated that the Petitioner is on roads, along with his family. He prayed to direct the Respondents for his reinstatement into service with continuity of service, back wages and other attendant benefits.

3. Respondents filed counter with the averments in brief as follows:

It is submitted that the Petitioner was dismissed from service on proved charges of absenteeism after conducting a detailed domestic enquiry duly following the principles of natural justice. It is submitted that the Petitioner was appointed as Floating Badli Filler on 5.8.2004 on compassionate grounds but not on 25.3.2004. He was issued with charge sheet dated 19.2.2007 for his absence from duty during the period from 1.1.2006 to 31.12.2006 on various dates with any sanctioned leave or sufficient cause under Company's Standing Orders 25.25 which reads as under:

"25.25: Habitual late attendance or habitual absence from duty without any sufficient cause."

The Petitioner received charge sheet and submitted his explanation on 21.2.2007, which was found not satisfactory and as such a domestic enquiry was ordered to be conducted. Accordingly an Enquiry Officer was appointed, the Petitioner has participated in the enquiry proceedings on 3.5.2007 and during the enquiry he has accepted his absence from duty on the dates mentioned in the charge sheet. It is further submitted that the Petitioner informed the Enquiry Officer that he met with a road accident during the month of January, 2006 and suffered from severe back pain and due to ill-health he could not produce any documentary evidence in support of his averment. As per the findings of the Enquiry Officer, the charge levelled against the Petitioner was proved. The Petitioner was supplied with copies of the enquiry report and enquiry proceedings. In turn he has submitted representation dated 2.6.2007 requesting to give him another opportunity to improve himself assuring that he will put up 20 actual musters every month. But, he had put in the following musters from the year 2004 to 2007:-

Year	Actual Musters
2004	049 days
2005	093 days
2006	042 days
2007 (Upto May)	043 days

After considering all the material on record, the Disciplinary Authority dismissed the Petitioner from service vide office order No.SRP/PER/13.008/4743 dated 28.9.2007 w.e.f. 5.10.2007. The contention of the Petitioner that he could not attend duties during the said period due to poor health and was not supported by any valid documentary evidence nor he has taken treatment in any of the Colliery dispensaries, Area hospitals or at Main Hospital, Kothagudem. It is submitted that there is a provision in the Respondent's company that an option will be given to the dependant of the deceased/medical unfit employees either to opt for a lumpsum payment of Rs.3.00 lakhs in lieu of dependant employment or MMC(Monthly Monetary Compensation), but the Petitioner sought for dependant employment and accordingly he was appointed as Floating Badli worker on 5.8.2004 on compassionate grounds. Therefore, the question of payment of Rs.3.00 lakhs does not arise in this case. More over, the Petitioner was given full and fair opportunity to defend his case during the course of enquiry. It is further submitted that subsistence allowance will be paid only to the employees who are under suspension during the course of enquiry, but the Petitioner was not suspended but dismissed from services, hence, the question of payment of subsistence allowance during the course of enquiry does not arise. Further, the Petitioner was counselled on 3.5.2007 and he has given an assurance in writing that henceforth he would perform his duties regularly and requested to excuse his mistake. But, he continued to remain absent unauthorizedly and finally the Respondent was constrained to terminate his services on proved charges of absenteeism. It is also stated that due to unauthorized absenteeism the work to be performed gets affected, and already planned schedules get suddenly disturbed without prior notice. As such, the Respondent is compelled to take severe action against the unauthorised absentees. Hence, the petition be dismissed as devoid of merits.

4. The domestic enquiry conducted in the present case held as legal and valid vide order dated 28.7.2011 as it was not challenged.

5. The Petitioner has filed his written notes of arguments and it has been considered. No arguments advanced from the side of the Respondent challenging the claim of the Petitioner.

6. The points for consideration are:-

I. Whether the action of the Respondent management in dismissing Sri K. Sadanandam, Badli Filler, from service on 5.10.2007 is legal and justified?

II. If not, to what relief the workman is entitled for?

7. **Point Nos.1 & II:** As per the averments made by the Petitioner in para 3 of the claim statement that he had put in 50 musters in the year 2004, 93 musters in the year 2005, 49 musters in the year 2006 and 78 musters in the year 2007 but Respondent No.2 terminated the services of the Petitioner on 5.10.2007. The Respondents though have not denied the averments made in para 3 of the claim statement, stated that the Petitioner had put in 49 musters in the year 2004, 93 musters in the year 2005, 42 musters in the year 2006 and 43 musters in the year 2007 upto the month of May, 2007. As per the allegation of the Respondents as the Petitioner did not put in minimum musters of 100 days per year he was chargesheeted, but the Petitioner workman submitted his explanation stating that due to his ill-health he could not be able to improve his musters in the year 2006.

8. Admittedly, the Respondents issued chargesheet against the Petitioner for his absenteeism in the year 2006 but in fact the Petitioner has improved his musters in the previous subsequent years and even in the year 2007 he has put in 78 musters till his removal from service. Even though the Petitioner joined in service on 5.8.2004, he has put in 50 musters during that year. Only because Petitioner has not put in sufficient musters in the year 2006 chargesheet was issued against him on 19.2.2007 for his absence from duty during the period from 1.1.2006 to 31.12.2006. The Petitioner found absent unauthorizedly during the chargesheeted year but during the time of such absence he could not have taken any kind of leave. Standing Order No.25(25) of the Respondents provides that, "habitual late absence or habitual absence from duty without any sufficient cause" amounts to misconduct, it may be without sufficient cause. Now, it is to be seen whether there was any sufficient cause for the absence of the Petitioner from duty or not. It is the plea of the Petitioner that due to his illness he could not be able to attend his duties and put in sufficient musters in the year 2006. The Petitioner alleged that even though he has joined at the end of the 3rd quarter of the year 2004, he has put in 50 musters during that year and also put in 93 musters in the year 2005. But due to his illness he could not put in sufficient musters in the year 2006 and after recovery, he has put in 78 musters in the year 2007. It is further stated that even though he has requested the Respondents to improve musters in future, the Respondents did not listen to him and removed him from service. When the workman has consistently taken the plea that due to his illness he was unable to improve his musters in the year 2006, the Management should have considered such plea. Admittedly the Petitioner was appointed after the death of his father on compassionate grounds and has joined in the Respondent's management at the age of about 25 years. Though the Petitioner has claimed that due to his illness he could not improve his musters but he has not submitted any document showing his illness for which the Respondents did not consider his case and awarded the punishment of dismissal. No doubt, working in the mines is very hazardous and when a young man is appointed in such a work, it would take sometime to adjust himself in the work. When a new work is given, it would become difficult on his part to manage himself in the working condition. In the instant case

when the Petitioner has improved his musters in the subsequent years i.e., after chargesheeted year the Respondent should have considered his case sympathetically, but on the other hand the Respondents have imposed the gravest punishment without considering the plight of the workman and his family members when the father of the Petitioner died after rendering 20 years of service in their management. The materials available on record clearly indicates that the father of the workman has put in long service of 20 years in the Respondent's company and his son being appointed on compassionate ground at a young age has only worked 3 to 4 years in their organization and only due to his illness when he failed to improve sufficient musters in a particular year, his case has not been considered. Further more, the workman is consistently stating that if an opportunity will be given, he will work under the Management regularly, and due to the removal of service he is now on roads and his family members are suffering a lot which clearly shows that the workman has already realised his mistake and he will work under the Management regularly in future. It is not the plea of the Respondent that the workman was a habitual offender of misconduct or there was any previous occasion of imposing punishment against him. As because the workman was not regular in his duty in a year, his action amounts to misconduct under the Company's Standing Order No.25(25). This is the first and the only instance of misconduct for which the Respondents were prompted to initiate the proceeding and conducted the enquiry and lastly imposed capital punishment. While imposing capital punishment, the Disciplinary Authority ought to have seen that the workman has not been imposed any penalty prior to such order. Admittedly, dismissal from service is a gravest punishment. So far as the service juris Prudence is concerned, the charge alleged against the Petitioner was not that of theft, assault or misappropriation of Company's funds which shall amount to capital punishment like dismissal from service. In this case due to illness the Petitioner could not be regular in his duties in the year 2006, but in the previous year and subsequent year the Petitioner has made his musters. The Petitioner was not imposed a penalty for any misconduct previously, but for the very first event of this nature the gravest possible punishment applicable in the Standing Order, i.e., dismissal from service has been awarded to the Petitioner.

9. The Management has contended that the musters put in by the Petitioner during the previous year to the chargesheeted period have not been taken note while awarding the punishment, but such action of the Management is not proper and reasonable. The past record becomes relevant while awarding the punishment which is a previously proven misconduct, but not the allegation only which was merely met without giving an opportunity to the workman to improve in future. As already discussed above there is no proven misconduct on the part of the workman to impose such a capital punishment at the first instance.

10. The allegation regarding putting in less musters in a year has compelled the Management to issue chargesheet against the Petitioner, who had been employed on compassionate grounds. The Respondents have stated that on 2.6.2007 the Petitioner submitted his representation requesting to give him another opportunity to improve himself assuring that he will put up 20 actual musters in every month, but he did not raise any objection against the findings of the Enquiry Officer. But the Respondents without considering the grievance of the Petitioner has imposed the gravest punishment as he has not raised any objection to the finding of the Enquiry Officer. The Disciplinary Authority has not considered the family condition as well as the previous conduct and the request of the Petitioner and without considering the above has awarded the capital punishment which is not at all reasonable and proper.

11. In view of the fore gone discussion it can safely be held that the findings of the Enquiry Officer that the workman is guilty of misconduct under Standing Orders No.25(25) and is liable for gravest punishment is not acceptable and further it is to be held that the punishment awarded to the workman is grossly disproportionate to the proven misconduct. Thus, the action of the Respondent Management i.e., M/s. Singareni Collieries Company Limited in terminating the service of Sri K. Sadanandam w.e.f. 5.10.2007 is held as neither legal nor justified.

This point is answered accordingly.

12. **Point No.II:** In view of the findings given in Point No.I, the impugned order of dismissal from service of the workman is to be set aside. As this is a case of unauthorized absenteeism, as the workman has not made sufficient musters and was found absent unauthorizedly, without taking either any leave or permission from his higher authorities, the workman is to be awarded an appropriate punishment of such lapse only. But as already stated above while deciding Point No.I, awarding punishment of dismissal from service in the very first instance of misconduct is not reasonable. Hence, withholding one annual grade increment without cumulative effect is reasonable punishment to be awarded to the workman for the lapse of not informing his superiors regarding his absence and without taking permission remained absent from duty. Hence, withholding of one annual increment without cumulative effect is reasonable punishment to be awarded to the workman for his lapse of not informing his superiors regarding his absence from duty.

This point is answered accordingly.

Result:

In view of the fore gone discussion, the Respondents are directed to reinstate the workman Sri K. Sadanandam into service with continuity of service and attendant benefits, without back wages, and the impugned order

No.SRP/PER/13.008/4743 dated 28.9.2007 is held as illegal and arbitrary and hereby set aside. Instead the workman shall be ordered with a punishment of stoppage of one annual increment without cumulative effect.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 13th day of June, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 30/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/32/2011-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1385.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of ICICI Bank and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/32/2011-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 4th day of February, 2016

INDUSTRIAL DISPUTE No. 30/2011

Between :

Smt. K. Balamani,
W/o Late K. Swamy,
Sweeper/Helper,
C/o 6-1-119/5,
Padma Rao Nagar,
Secunderabad

...Petitioner

AND

The Manager,
ICICI Bank Ltd.,
Karkhana Branch,
Secunderabad

...Respondent

Appearances :

For the Petitioner : M/s. C. Suryanarayana Rao, C. Sridhar, C. Chakradhar & G. Krishna Kishore, Advocates

For the Respondent : M/s. C. R. Sridharan, G. Narender Reddy, S. Ramesh, M. Srinivas Reddy, P.V. Durga Prasad, G.V.S.Ganesh & M. Sreehari, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/32/2011-IR(B-I) dated 4.7.2011 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of ICICI Bank Ltd., Karkhana Branch and their workman. The reference is,

SCHEDULE

“Whether the action of the management of ICICI Bank Ltd., Karkhana Branch, Hyderabad in terminating the services of Smt. K. Balamani W/o Late K. Swami, w.e.f. 11.8.2010, is legal and justified? To what relief the workman is entitled?”

The reference is numbered in this Tribunal as I.D. No.30/2011 and notices were issued to the parties concerned.

2. Pursuant to the notice, the Petitioner appeared and filed claim statement. The Petitioner workman raised dispute against the Respondent for her illegal termination and prayed this Tribunal to direct the Respondents to reinstate her into service with full back wages and continuity of her service, all attendant benefits with interest at 12% p.a. on the back wages and exemplary costs.

3. Respondents appeared and filed their counter.

4. During the course of hearing of the industrial dispute, on 4.2.2016, both the parties appeared and filed one Memorandum of Settlement stating therein that the matter has been settled between the parties and the Petitioner workman has received her terminal benefits for her service towards full and final settlement.

5. In view of the settlement, the management has paid a sum of Rs.1,75,000/- to the workman vide Demand Draft No. 501423 dated 29.1.2016 drawn on ICICI Bank, Karkhana Branch, Secunderabad, to which the Petitioner workman has acknowledged.

6. In view of the aforesaid settlement reached between the parties, the dispute between the parties was settled. The Memorandum of Settlement entered into Under Sec.18(1) read with Sec.2(p) of the Industrial Disputes Act, 1947 clearly indicates that the dispute between the parties has already been settled and as such there is no dispute between parties. Thus, the Memorandum of Settlement filed by the parties is accepted. The case is disposed of accordingly. Hence, no dispute Award is passed.

The reference is answered accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 4th day of February, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of Evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 16/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/29/2010-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1386.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of ICICI Bank and their workmen, received by the Central Government on 20.06.2016.

[No. L-12011/29/2010-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/16/2011**

General Secretary,
Dainik Vetan Bhogi Bank Karmachari Sanghathan,
F-1, Tripti Vihar, Opp Engineering College,
Ujjain

...Workman/Union

Versus

General Manager,
ICICI Bank, C-3, Sardar Patel Marg,
Jaipur, Rajasthan

...Management

AWARDPassed on this 29th day of January 2016

1. As per letter dated 4-3-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/29/2010-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Bank of Rajasthan Limited, Indore in not paying wages equal to the regular employee from March 96 to 15-1-2005 is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Secretary of Daily Wage Bank Employees union submitted statement of claim on behalf of workman Ramchandra. Case of Ist party workman is that he was engaged as peon by Branch Manager Shri R.G.Gatani of Shamgarh branch from April 1998. Workman was working for 8 hours every day. He completed more than 240 days during 1998 to February 2008. When workman claimed pay scale of regular employee, his services were terminated in violation of section 25-F of ID Act. he was not paid retrenchment compensation or pay in lieu of notice. The dispute pertaining to termination of his service was pending before RLC Bhopal in conciliation proceeding. Workman submits that he was not paid wages/ pay scale as per Bipartite Settlement. That as per Para 5 to 8 of Sastry award, he is eligible for scale wages as per the bipartite settlement. That violation of bipartite settlement is punishable under Section 29 of ID Act. On such ground, workman claims difference of wages as per the bipartite settlement without mentioning the amount.

3. Management filed Written Statement opposing claim of workman. preliminary objection was separately filed that the terms of reference is not proper. The name of workman is not mentioned in the order of reference therefore the reference cannot be adjudicated. In written Statement filed by management, above contentions have been raised. As name of workman is not mentioned in the order of reference, his claim for difference of wages as per the bipartite

agreement could not be decided. The reference is not tenable. The daily wage employees engaged in the Bank for cleaning, sweeping etc work are engaged on contract as casual employees. They used to work for 30-40 minutes in the morning. That Shri Ram Nawanshi so called Union secretary was dismissed employee of the Bank is not competent to raise the dispute. Ratio held in different cases is relied on the point. Statement of claim submitted by Ist party doesnot raise dispute under Section 2K of ID Act. The reference deserves to be rejected. In the statement of claim submitted by Ist party Union, period is mentioned 1998 to 2008 whereas in the order of reference, the period is mentioned 1998 to 15-1-2005. The order of reference and statement of claim are not consistent. The workman Ramchandra was working as security guard in the Bank from June 2005. He was doing cleaning, sweeping work for 30-40 minutes. Said workman was not working for 8 hours claimed by him. Shri Ramchandra was working on pay role of top security Ltd. he was not appointed by Bank of Rajasthan. He is not eligible for any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Bank of Rajasthan Limited , Indore in not paying wages equal to the regular employee from March 96 to 15-1-2005 is legal and justified?	Reference is defective, it cannot be adjudicated.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. Workman is claiming difference of wages. Statement of claim is filed by Union. In statement of claim, name of workman is shown as Ramchandra. As pointed out in argument, name of workman is not mentioned in the order of reference. Reference order appears defective in absence of name of workman in reference order. The claim of Shri Ramchandra shown in statement of claim could not be decided. Workman Ramchandra filed affidavit of evidence but he did not appear for cross-examination rather Union Secretary Ram Nagwanshi submitted that workman doesnot want to adduce evidence.

6. Management filed affidavit of evidence Sristi Priya supporting contentions of management in Written Statement about name of workman is not mentioned in order of reference. The daily wage employees engaged in the bank for cleaning work was working for 30-40 minutes in the morning. Shri Ram Nagwanshi Secretary is a dismissed employee of the Bank is not competent to raise dispute. In her cross-examination, management's witness says she was not posted in Shamgarh branch from 1998 to 2008. She has not seen any documents pertaining to the service of Ist party workman. she had not discussed about the matter with Branch Manager working during the relevant period. The old documents were destroyed. She claims ignorance about working days of workman or workman was paid skill based wages. Exhibit W-1 admitted by management is notice dated 23-9-98 inviting applications from temporary employees for absorption who had worked for 180 days as part time employee or 80 days full time employee. Said document is not irrelevant for deciding the claim of Ist party pertaining to the difference of wages. The zerox copies of documents about payment of wages are denied by the management. workman has not appeared for cross-examination. Those documents are not proved by valid evidence. Exhibit W-2 admitted by management is interview call issued to workman Shri Ramchandra. Workman was called for interview on 15-4-98. Exhibit W-3 is copy of the written argument submitted before RLC, Bhopal. Management had contented that Shri Ramchandra T.No.5058 was working through M/S Top Securities during June 05 to Feb08. It is subsequent to the period of engagement mentioned in the order of reference March 96 to 15-1-2005. Exhibit W-4 is certificate issued by Top security Ltd. workman was on its pay from June 05 to Feb-08 subsequent period. Document Exhibit W-3 & 4 are not relevant for deciding claim for difference of wages. Exhibit W-5 is copy of Section 29 of ID Act. evidence on record cannot establish claim of workman Shri Ramchandra. His name is not mentioned in the order of reference. Therefore I record my finding in Point No.1 that order of reference is defective.

7. In the result, award is passed as under:-

- (1) Claim under reference could not be decided as the order of reference is defective.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एचडीएफसी बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. II, चंडीगढ़ के पंचाट (संदर्भ सं. 88/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12012/92/2009-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1387.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of HDFC Bank and their workmen, received by the Central Government on 20.06.2016.

[No. L-12012/92/2009-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

In the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh

Present: Sri Kewal Krishan, Presiding Officer**Case No. 88/2010**

Registered on 10.12.2010

Sh. Gurmit Singh S/o Sh. Pritam Singh, R/o H.No.589,
Village Maloya, U.T., Chandigarh

...Applicant

Versus

1. HDFC Bank (Formally know as Centurion Bank of Punjab),
Modern Centre 'C' Wing Ground Floor, Sh. Guruji Marg,
Mahalaxmi, Mumbai-400011, Through its Managing Director.
2. HDFC Bank situated at SCO No.46-47, Sector 9-D,
Chandigarh through its Regional Manager.
3. HDFC Bank situated at SCO No.46-47, Sector 9-D,
Chandigarh, through its Zonal Manager

...Respondent

APPEARANCES :

For the workman - Sh. Sanjay Kumar, Adv.

For the Management - Sh. Amit Rishi, Adv.

AWARD

Passed on:- 18.03.2016

Vide Order No.L-12012/92/2009-IR(B-I), dated 30.11.2010, the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Centurion Bank of Punjab(Now HDFC Bank) in terminating the service of Sh. Gurmeet Singh w.e.f. 1.9.2005 is legal and justified? To what relief the workman is entitled?”

In response, the workman submitted statement of claim pleading that he was appointed as Driver on 17.11.1995 and was deputed to work at Sector 9-D, Chandigarh. His salary was Rs.3500/- per month. His services were illegally terminated on 1.9.2005 without serving any notice and without paying him any retrenchment compensation. It

is further pleaded that the persons junior to him were retained in service as well as fresh appointments were made after the termination of his service. Thus, the termination of his services is illegal and he be reinstated in service.

The respondent-management filed written reply controverting the averments and denied that the workman was ever employed by it. It is pleaded that workman was the personal driver of Sh. Sarbjit Singh, Ex-MD of Bank of Punjab, who used to pay him salary and the bank did not pay him salary.

Since the workman was not employed by the respondent-management, his services were not terminated by it.

Parties were given opportunity to lead their evidence.

In support of his case, the workman appeared in the witness-box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand, respondent-management has examined Sh. Rajesh Bhatia, who filed his affidavit supporting the stand of the respondent-management.

I have heard Sh. Sanjay Kumar for the workman and Sh. Amit Rishi for the management.

It was argued by the learned counsel for the workman that the workman had been working as Driver since the year 1995 and his services were terminated on 1.9.2005 without paying him any retrenchment compensation, as well persons junior to the workman were retained in service and even management appoint new Drivers after the termination of the services of the workman; and as such, the termination of the services of the workman is illegal.

I have considered the contentions of the learned counsel.

It may be added at the outset that workman claims that he was appointed by the respondent-management on 17.11.1995 and he performed the duty of the Driver till 1.9.2005. The workman has deposed while appearing in the witness-box that no appointment letter was issued to him. In the absence of any appointment letter, it cannot be said that the workman was ever engaged by the respondent-management. Again there is nothing on the file to suggest that any rules and regulations were followed while appointing the workman as Driver. Workman has stated that he was getting salary from the bank but, there is no evidence on the file to show that he ever received the salary from the bank, though, according to him, he was working with the respondent-bank from 1995 to 2005.

Rajesh Bhatia, examined by the respondent-management has specifically stated that as per record, the bank did not pay any salary to the workman. When the workman did not receive any salary from the bank during all these years, it cannot be said that he was ever engaged by the Bank.

There is no other cogent evidence on the file to prove that the workman was ever employed by the bank. Thus, it is not proved on the file that there is a relationship of employers and employee between the management and the workman and when it is so, it cannot be said that his services were terminated by the bank as alleged.

In result, the reference is decided against the workman and the workman is not entitled to any relief.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 1 जुलाई, 2016

का.आ. 1388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ हैदराबाद के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 91/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.06.2016 को प्राप्त हुआ था।

[सं. एल-12025/01/2016-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 1st July, 2016

S.O. 1388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 20.06.2016.

[No. L-12025/01/2016-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present : Sri Muralidhar Pradhan, Presiding Officer**Dated the 21st day of April, 2016**INDUSTRIAL DISPUTE L.C. No. 91/2007****Between:**

Sri M. Nageswara Rao,
S/o Late M. Suryanarayana Murthy,
R/o Plot No.54, Road No.3,
Sri Sai Nagar Colony,
Nagole, Hyderabad – 500 068

...Petitioner

AND

1. The Assistant General Manager,
(Disciplinary Authority),
State Bank of Hyderabad,
Region-II, Secunderabad Zonal Office,
Begumpet, Hyderabad.
2. The Deputy General Manager,
(Appellate Authority),
State Bank of Hyderabad,
Secunderabad Zonal Office,
Begumpet, Hyderabad

...Respondents

Appearances:

For the Petitioner : Sri G.V.L.N. Murthy, Advocate
For the Respondent : Sri Ch. Siva Reddy, Advocate

AWARD

Sri M. Nageswara Rao, who was working as a Data Entry Computer Operator (DECO) has filed this petition against the Respondents seeking for declaring the impugned order dated 23.3.2004 issued by the Respondent No.1 and also the 2nd Respondent's order dated 27.3.2007 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. Petitioner has made averments in the petition in brief are as follows:

The Petitioner workman was appointed as a Clerk cum Cashier in the year 1980 in the Respondent's bank and subsequently he was made Data Entry Computer Operator (DECO) and posted at Habsiguda branch. In the year 2003, the workman while working at NGRI Extension counter some financial irregularity came into light and the Respondent's officials plotted to throw the entire liability on the Petitioner and tried to make him the scape goat for the wrongs/offences with which the Petitioner was not at all concerned. The Respondents lodged FIR at Uppal Police Station against the Petitioner and Police took the same vide FRI No.158/2003 for the offences U/ss. 420 & 409 of IPC. The officials of Respondent and Police started a hunt for the Petitioner. The Petitioner being innocent, scared of the disrepute in the society and harassment by the Police, went away in search of mental peace. After some time, the Petitioner realized that he had no other way except to surrender before the police and to establish his innocence before the Court of Law. Accordingly, the Petitioner surrendered himself to Uppal Police Station and he was under Judicial Custody till he was acquitted by the Court and released from Judicial Custody on 9.6.2005 by the Hon'ble Metropolitan Magistrate, Cyberabad, at L.B. Nagar, from the Criminal Case No. 30/2005. The Petitioner was under the impression that he might have been suspended due to filing of criminal Case and being remanded to Judicial Custody. After his acquittal by the Court the Petitioner submitted a representation to 2nd Respondent on 21.6.2005. But in reply the 2nd Respondent in his letter dated 26.7.2005 made it clear that the Petitioner was dismissed from service basing upon a Disciplinary Enquiry and not on any Police case. The entire proceeding was conducted in absence of the Petitioner and behind his back. Then the Petitioner vide his letter dated 13.8.2005 requested the first Respondent to supply all documents relevant to the Disciplinary Proceedings and for payment of subsistence

allowance for the period of his suspension. All the documents relating to the Disciplinary Proceedings were supplied to the Petitioner vide letter No.F/GRVII/DP/8194 dated 3.11.2006 after an abnormal delay. But subsistence allowance paid to the Petitioner. from the charge sheet dated 17.9.2003 and subsequently the Petitioner came to know that three charges have been framed against him.

“Charge Nos.1to 3: While working as DECO at NGRI extension counter under Habsiguda Branch from November, 1999 to 6.3.2003 CSE alleged to have committed certain serious acts of gross misconduct under the para 5 D & J of MOS dated 10.4.2002/Bipartite Settlement.”

The Petitioner alleged that as per the contention of the Respondents due to the above alleged serious acts of misconducts the Respondent bank incurred a loss to the extent of Rs.17.62 lakhs and also placed the image/interest of the Bank in Jeopardy. Therefore, the Respondents conducted an enquiry and after the enquiry, the Enquiry Officer held that charge Nos. 1 & 3 are proved and Charge No.2 was partially proved is highly erroneous which was based on mere assumptions and the self serving statements of the concerned officers. In his finding the Enquiry Officer held that certain fictitious entries of interest, credits and debits have been made by the Petitioner. This is an absolutely wrong finding because the Enquiry Officer failed to see that the Petitioner was only a data entry operator and every entry made by him had to be checked by not only the head of the Extension Counter but also the Chief Manager of the branch. The allegation that the Petitioner made the entries without vouchers or other instruments is absolutely false which was fabricated against the Petitioner to shift the entire irregularity on the Petitioner and to save the real culprits. The other fact that the Petitioner being a simple data entry operator can not even enter the data pertaining to transactions of amounts more than ten thousand rupees was not considered by the Enquiry Officer. Entry of any amount in excess of Rs.10,000/- has to be compulsorily authorized by the supervising officer on the computer. During the course of enquiry all the officers clearly deposed that none of them have given their ID/Password to the Petitioner and it was not considered by the Enquiry Officer. So making false or fictitious entries by the Petitioner is impossible and impracticable. The other allegations that the Petitioner obtained hand loans from NGRI employees and he lived beyond his means are baseless and false. The Petitioner further submitted that on the same and similar allegations, Respondent No.1 has lodged complaint before the Police, at Uppal Police Station on which C.C. No.30/2005 for offences under Ss. 420 & 409 IPC was registered and after trial, the III Metropolitan Magistrate, Cyberabad, at L.B. Nagar acquitted the Petitioner. During the course of trial several officers of the Respondent's bank and third party complainants were examined. The Learned Magistrate, in his judgement dated 9.6.2005 while acquitting the Petitioner from the charges observed the following reproducing the statement of the witnesses:

“PW4 categorically admitted that without the permission of the Officer, the accused cannot transact for more than Rs.10,000/-. For every withdrawal of the amount more than Rs.10,000/- the officer has to authorize the transaction. Therefore, the evidence of PW4 is crystal clear that without the permission or co-operation or what so ever of the Manager of the Bank, the accused who was a Data Entry Computer Operator ca not fraudulently transfer any amount form one account to another(Para 12). No one has been examined who gave cash to the accused for depositing in their account. There is no evidence in respect of this allegation against the accused. (Para 14). For the mistakes and wrongs committed by other, the accused alone can not be blamed. No such customer or depositor has been examined in this context and since no complaint has been received by the bank, the accused can not be blamed. (Para 15).This court is of the firm view that there is no cogent, satisfactory and convincing evidence that the accused fraudulently transferred amounts from one account to another and cheated the bank and committed the offence of criminal breach of trust. (Para 16).

It is also submitted that though the allegation of fraud is concerned with a huge amount of money, no other employee except the Petitioner was made liable. Even though the Petitioner did not commit any misconduct Respondent made him scape goat for sheltering other staff that might have been responsible for the irregularities or fraud. It is further submitted that in the ex-parte departmental enquiry conducted against the Petitioner the Enquiry Officer failed to cross examine the management witness and to elicit the truth but simply recorded their statement given in favour of the management and against the Petitioner. Therefore, the domestic enquiry conducted by the Respondent management is a farce and empty formality in violation of the principles of natural justice. Causing great injustice to the Petitioner. It is also submitted that the Respondent by filing a false criminal case and inflicting punishment of wrongful dismissal against the Petitioner, was unnecessarily put to immense financial hardship to him besides a lot of mental agony and social degradation. Even though the Petitioner was ultimately acquitted on merits from criminal case, he was made to suffer for a considerably long period as remand prisoner and forced to be out of employment without his fault. It is also stated that the Petitioner was also kept under suspension from 28.3.2003 till he was dismissed vide order dated 23.3.2004. Though the Petitioner was entitled for payment of subsistence allowance for the above said period, the Respondents did not respond to his request and did not pay any amount towards subsistence allowance till date. Under the above circumstances the Petitioner submits to set aside the impugned order dated 23.3.2004 passed by the first Respondent and the order dated 27.3.2007 passed by the second Respondent and

to pass an award directing the Respondents to reinstate him into service with continuity of service, all attendant benefits and full back wages etc.

3. **The Respondents filed counter statement with the averments in brief as follows:**

The Respondents in their counter while denying each and every allegations of the Petitioner made in the claim statement challenged the case of the Petitioner stating that the Petitioner is required to prove each and every allegation made against him. In toto the Respondents submitted that the claim statement filed by the Petitioner is not maintainable either in law or in facts. The Respondents submitted that the Petitioner while working in the Respondents' bank as a Data Entry Computer Operator at NGRI Extension counter, Habsiguda branch committed grave misconduct and financial irregularity. He was issued with memo calling for the explanation dated 28.3.2003 and he was kept under suspension. At the same time the Respondent bank lodged a complaint before the Police of Uppal Police Station against the Petitioner by filing FIR No.158/2003 for the offences under Section 420 and 409 of IPC. The Petitioner was found absconding for long time and finally he was nabbed by the police and was sent to judicial custody. As the Petitioner failed to submit his explanation he was issued with the charge sheet dated 17.9.2003 for the gross misconduct committed by him under the provisions of the bi-partite settlement. The allegations made by the Petitioner that Police complaint was given against him to make him scape goat and the Respondents' officials plotted to throw the entire liability on the Petitioner are utterly false and baseless. It is further stated that the Petitioner was suspended from service vide letter dated 28.3.2003 and he was issued with the charge sheet dated 17.9.2003. All the notices were sent to the Petitioner by registered post with acknowledgement due which were returned as the applicant had absconded. Thereafter, the Respondents bank appointed Sri V. Basava Raju as the Enquiry Officer and Sri G.Srinivas, Officer in MMG II to present the case of the management before the Enquiry Officer. The Enquiry Officer has also sent all the day to day proceedings to the Petitioner's last known address and they were also returned undelivered with 'the endorsement "not claimed" "person out of station", addressee 7 days absent", hence returned to the sender etc.. The Enquiry Officer fixed the preliminary enquiry on 23.10.2003 and sent the notice by RPAD dated 13.10.2003 which was returned unclaimed. Thereafter notice was also published in the Indian Express Daily News Paper dated 10.10.2003. As the Petitioner failed to appear before the Enquiry Officer on 23.10.2003, the enquiry was adjourned to 11.11.2003 and again notice was issued by paper publication in Indian Express dated 28.10.2003. In spite of taking cohesive attempt to procure the attendance of the Petitioner as the Petitioner failed to appear before the Enquiry Officer, the enquiry was held ex-parte from 11.11.2003 to 13.11.2003 and 8.12.2003 and 9.12.2003. In the enquiry, the management has examined 15 witnesses and marked Ex. Mex.1 to Mex.29. It is also submitted that as the applicant has inserted some spurious entries in the statement called "vouchers received from the main branch" and fictitious entries were made in the computer by using his ID and committed fraud and misappropriated the funds of the bank. Petitioner was issued with the charge sheet dated 17.9.2003 containing three charges and due to the serious act of misconduct the Respondents' bank incurred a loss of Rs.17.62 lakhs and also placed the image/interest of the bank in jeopardy. The Enquiry Officer after considering the evidences, oral and documentary, came to the conclusion that the Petitioner by using his password and making the entries in several accounts without supporting vouchers or instruments and finally embezzled the amounts as stated in the chargesheet. He has also increased the amounts in the extension counter under the columns "vouchers received from main branch" and afforded fictitious credits to some accounts and misappropriated the funds. Even though the Petitioner has no authority to enter the data exceeding Rs.10,000/- he has used his ID unauthorizedly and made false and fictitious entries and taken the money from the bank. It is also stated that acquittal in the criminal case is not a bar for proceeding in the departmental enquiry or after an employee is dismissed in departmental enquiry he has no right to claim reinstatement on the ground that he is acquitted by the Criminal Court. It is also stated that as the Petitioner was absconded and did not participate in the enquiry, the Enquiry Officer has proceeded with the departmental enquiry as per the laid down practice and procedure by issuing notice by RPAD and also by publishing in daily news paper. The failure of the Petitioner attending the enquiry can not be attributed to the bank and the Petitioner can not claim that principles of natural justice were violated. After the enquiry, the Enquiry Officer held that Charge No.1 and 3 were fully proved and charge No.2 was partly proved. The Disciplinary Authority after verifying the findings of the Enquiry Officer passed the order of dismissal from service treating the period of suspension as off duty. Even though the Petitioner preferred the appeal, the Appellate Authority was also after going through the materials placed before him confirmed the order of punishment passed by the Disciplinary Authority. As the punishment awarded was dismissal from bank's service, treating the suspension period as off duty, the Petitioner was not liable for any allowance, other than the subsistence allowance which is already paid. Therefore, the Petitioner is not eligible for any subsistence allowance as alleged by him as the enquiry was conducted fairly and reasonably following the procedure in vogue and the principals of natural justice. It is further submitted that the Respondent is a public sector bank dealing with public funds. The employees who are working in the bank shall work not only diligently but with due integrity. The dishonest and fraudulent persons do not have a place to work in the organisation like the Respondent bank which is dealing with the public funds. Misappropriation of the funds in the bank is not an ordinary misconduct which needs any kind of sympathy for the employees. The Respondents further submitted that

the Apex Court in several cases have observed that the dishonest employees who commit misconduct shall not be shown any sympathy and they are liable to be dismissed from service. Therefore, the punishment awarded against the Petitioner is appropriate and he is not entitled for any kind of reinstatement. It is further stated that the enquiry was held in accordance with the procedure prescribed and under the provisions of the bi-partite settlement. The Petitioner was given ample opportunity which he has failed to avail. At no point of time the principles of natural justice have been violated while conducting the departmental enquiry against the Petitioner. Therefore, the claim of the Petitioner is liable to be dismissed.

4. The Learned counsel for the Petitioner filed a memo stating not to challenge the validity of the departmental enquiry conducted by the Respondent management. In the light of the memo, on 23.11.2011 the departmental enquiry conducted by the Respondent management is held as legal and valid.

5. Both the parties advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947. Written arguments have also been filed by the parties and it has been taken into consideration.

6. As per the pleadings of both the parties, the following points are to be considered:-

- I. Whether the action of the management of State Bank of Hyderabad, in passing dismissal order against the Petitioner Sri M. Nageswara Rao is legal and justified?
- II. If not, to what relief the Petitioner is entitled for?

7. **Point No.I :** The Learned Counsel for the Petitioner submitted that the Petitioner is a mere DECO, but as some financial irregularities came into light, the Respondent management plotted to throw the entire liability on the Petitioner and tried to make him a scape goat for the wrongs with which the Petitioner was not at all concerned. The Respondents framed charges against the Petitioner who did not have any explanation to the charges and behind the back of the Petitioner an enquiry was conducted and in that enquiry without giving any opportunity to the Petitioner to cross examine the management witnesses the Enquiry Officer held the Petitioner guilty of the charges and suggested to impose punishment and the Disciplinary Authority without verifying all the materials in detail passed the punishment of dismissal of the Petitioner from service. The Respondents had also lodged a complaint before the Police of Uppal Police Station which was registered vide FIR No.158/2003 for the offence under Section 420 and 409 of the IPC. Police arrested the Petitioner, remanded him to judicial custody for a long period. The III Metropolitan Magistrate, Cyberabad, at L.B. Nagar after conducting regular trial acquitted the Petitioner from the charges and the Petitioner was proved to be an innocent person. From the charges levelled against the Petitioner, it was crystal clear to the mind of the court that the Petitioner being a DECO can not alone commit the offence. The allegation of the Respondents is that the Petitioner has committed certain serious acts of misconduct causing damage to the reputation of the bank and also was prejudiced to the interest of the bank. It is also alleged that the Petitioner has made some wrong entries in the accounts of others causing financial loss to them and by committing some manipulations he has also misappropriated the bank's money causing a loss of Rs.17.62 lakhs. But in the case at hand the Disciplinary Authority has conducted the enquiry ex-parte without giving any opportunity to the Petitioner to cross examine the management witnesses. In the criminal case the Learned III Metropolitan Magistrate while passing the judgement has observed that the accused Petitioner is an innocent person and no cogent and satisfactory evidence was established by the Respondent to hold the accused/Petitioner guilty of the charges. Moreover, even though the Petitioner was put to suspension the Petitioner was not given subsistence allowance during the period of his suspension and without any fault of his the Petitioner has been dismissed from service. He submitted to reinstate the Petitioner into service and allow the Petitioner to get back all his back wages. He also fairly submitted that the Petitioner has already attained the age of superannuation. So, the question of reinstatement of the Petitioner in service does not arise. Only the Petitioner is entitled to get all the attendant benefits and full back wages. The order of dismissal passed against the Petitioner is to be set aside and order be passed to reinstate the Petitioner into service with all his attendant benefits and back wages.

8. On the other hand, the learned Counsel for the Respondent submitted that the Respondent management is a public sector bank dealing with public funds. The employees who are working in the bank shall work not only diligently but also with due integrity. The dishonest and fraudulent persons do not have a place to work in the organisation like the Respondents' bank which is dealing with the public funds. The misappropriation of the funds in the bank is not an ordinary misconduct which needs any kind of sympathy for the employees. The Petitioner being a DECO has misappropriated public funds and due to the misconduct of the Petitioner the bank has to suffer a loss of Rs.17.62 lakhs and for the afore said misconduct chargesheet was issued to the Petitioner and enquiry was conducted. But even though several opportunities were given to the Petitioner to attend the enquiry, the Petitioner intentionally did not attend the enquiry and gave no explanation. The Enquiry Officer after verifying all the materials available before him closed the enquiry and submitted the report. Wherein the Petitioner was found guilty and the Enquiry Officer suggested punishment of dismissal of the Petitioner from service. The Disciplinary Authority after verifying the enquiry report passed the order of dismissal of the Petitioner from service. The Petitioner made an appeal before the Appellate Authority, but it was rejected. Even though the Petitioner was acquitted in the criminal case, he is not

liable for reinstatement in the service. Since the punishment awarded was dismissal from service, treating the suspension period as off duty, the Petitioner is not eligible for any allowance other than the subsistence allowance. Moreover, even if the Petitioner was acquitted by the court from the criminal charges by judgement dated 9.6.2005 but acquittal in a criminal case has no bar to the provisions under the departmental enquiry or if the employee is dismissed in the departmental enquiry he has no right to claim reinstatement on the ground that he was acquitted by the Criminal Court. In this regard law is well settled, "that acquittal in a Criminal Case is not a bar for proceeding in the Departmental Enquiry." Since the Petitioner has misappropriated huge amount of public funds, the Respondents have rightly passed the order of dismissal of service against the Petitioner. He submitted for dismissal of the claim of the Petitioner with exemplary costs.

9. On consideration of the rival contentions of both the sides and on perusal of the materials available on record it is seen that the Petitioner was a mere DECO and every entry made by him had to be checked not only by the Head of the Extension Counter but also by the Chief Manager of the Bank. The allegation of the Respondents that the Petitioner has made the entries without vouchers or for the instruments which can not be accepted. More over, the Petitioner being a DECO can not even enter data pertaining to transaction of amount more than Rs.10,000/- and entries of amount of more than Rs.10000/- had to be compulsorily authorised on the computer by the supervising officer to which the Petitioner has violated and by doing such entry, the Petitioner has manipulated the bank account by causing a huge amount of loss to the bank. Thus, in the circumstances, as stated above, when the Petitioner has no authority to make any entry for more than Rs.10,000/-, how entries of more than Rs.10000/- was made by the Petitioner when it requires the permission of the supervising officer, and also while making the entry who had given permission to the Petitioner. So when the Petitioner had made the entries somebody might have given the permission. Therefore, in such circumstances, how the Petitioner was solely responsible for the entries made in respect of huge amount of money, when permission for entry of an amount of more than Rs.10000/- is required. So, if any misappropriation has been made in the accounts of the bank it has been done with the collusion of other employees of the bank and a single man like the Petitioner who was a mere DECO can not alone do it. In this regard the stand taken by the Petitioner that in order to shift the entire liability on him, the Respondent officials plotted to throw the entire liability on him and tried to make him the scape goat for the wrongs committed by others with which the Petitioner was not at all concerned, can not be thrown out. Further more, the Learned Metropolitan Magistrate in his judgement, while dealing with the evidence of PW4, a so-called employee of the bank, have also observed that "without the permission or co-operation or what so ever of the Manager of the Bank, the accused(Petitioner) who was a Data Entry Computer Operator can not fraudulently transfer balance for any amount from one account to other." The court has also observed that, "No one has been examined who gave cash to the accused for depositing in their account. There is no evidence in respect of this allegation against the accused/Petitioner for the misconduct and wrong committed by the Petitioner and the accused/Petitioner alone can not be blamed." In such a case, customer or depositor has to be examined in this context and since no complaint has been received by the bank, the accused(Petitioner) can not be blamed. The court has already held that there is no cogent, satisfactory and convincing evidence that the accused fraudulently misappropriated the amount from the accounts of the bank, i.e., from one account to another, and cheated the bank by committing offence of criminal breach of trust. The above observation of the court clearly proves that one innocent DECO has been falsely booked in a criminal case and suffered a lot. No doubt, the domestic enquiry has been conducted ex-parte. During the time of the departmental enquiry as the Petitioner was booked in a criminal case, the Petitioner could not get any chance to cross examine the management witnesses. If the management witnesses would have been cross examined by the Petitioner the real truth could have been brought to light. Only basing on ex-parte enquiry, the Petitioner has been held guilty of the charges of misconduct. In fact, without any fault of the Petitioner he has been given the punishment of dismissal from service. Thus, in such circumstances, the action taken by the Management against the Petitioner is not legal and justified and as such the Petitioner is eligible to be reinstated into service and the order of dismissal passed by the Respondent Management is liable to be set aside.

This point is answered accordingly.

10. **Point No.II:** In view of the findings given in Point No.I, the order of dismissal passed by the Respondent vide order dated 23.3.2004 is liable to be set aside. It is seen that at the time of filing of the claim petition, the Petitioner was aged about 51 years. Now, the Petitioner is over-aged and has already lost the opportunity to serve in the Respondents' bank. The Learned counsel appearing on behalf of the Petitioner has also clearly submitted that the Petitioner has already attained the age of superannuation, so the question of reinstatement into service does not arise. Admittedly, Petitioner has not been given the subsistence allowance during the period of his suspension, which he is entitled to get. Therefore, the Petitioner is entitled to get the subsistence allowance in respect of the period of his suspension. Petitioner is also entitled to get all attendant benefits and 50% of back wages.

This point is answered accordingly.

Result :

In the result, the petition is allowed. The action of the State Bank of Hyderabad in dismissing Sri M. Nageswara Rao from services is illegal and arbitrary and the dismissal order is hereby set aside. As the Petitioner has attained the age of superannuation, the question of reinstatement does not arise. He is entitled for subsistence allowance for the period from 28.3.2003 till he was dismissed vide order dated 23.3.2004. Sri M. Nageswara Rao is also entitled to get all attendant benefits and 50% of back wages.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 21st day of April, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

WW1: Sri M. Nageswara Rao

Witnesses examined for the Respondent

MW1: NIL

Documents marked for the Petitioner

Ex.W1 : Photostat copy of judgement of III MMC, LB Nagar, Hyderabad dt. 9.6.2005

Ex.W2 : Photostat copy of judgement in CRC No. 987/2007 dt.25.7.2007

Documents marked for the Respondent

NIL

नई दिल्ली, 4 जुलाई, 2016

का.आ. 1389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओएनजीसी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 50/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.07.2016 को प्राप्त हुआ था।

[सं. एल-30012/09/1996-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th July, 2016

S.O. 1389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the management of M/s. ONGC and their workmen, received by the Central Government on 04.07.2016.

[No. L-30012/09/1996-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 17th February, 2016

Reference: (CGITA) No. 50/2004

Reference: (ITC) No. 16/1997

1. The Director (per.),
ONGC Ltd., Tel Bhavan,
Dehradun,

2. The Regional Director,
ONGC Ltd.,
WRBC., Makarpura,
Baroda

...First Party

Vs.

Their Workmen
Through the General Secretary,
ONGC Employees' Union,
8, Samarpan Shopping Centre, Highway,
Mehsana

...Second Party

For the First Party: Shri K.V. Gadhia, Advocate

For the Second Party: C/o. ONGC Employees' Union

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/09/96-IR (C-I) dated 12.06.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of ONGC in not allowing additional increment as per their office order No. 20(22)/81-EP dt. 15-4-1981 at the time of induction in steno Grade III to Sh. Babuji K. George and 52 others (as per list enclosed) is legal and justified? If not, to what relief are the workmen entitled?”

2. The reference dates back to 12.06.1997. First party ONGC moved an application (Ext.9) on 17.09.1998 requesting the Tribunal to frame and decide preliminary issue assuming that statements and averments made in the statement of claim by the second party union are true and correct. He has alleged that present reference not maintainable in law because looking at the prayer in para 13 and contents reproduced in para 1 it is crystal clear whether to grant additional increments to the stenographers is absolute discretion of the management and Promotions Regulations(herein after we called as R&P Regulations for the sake of brevity). It is a matter of policy of the first party corporation to consider granting of advance increment in deserving cases but no candidate can claim such benefits as a matter of right. The corporation is granting such benefits only after recommendation of selection board, meaning thereby the selection board is exercise such discretion only after considering performance. If performance is worth to consider for such additional increments then only the selection board recommends for that otherwise not. Hence, it is most respectfully submitted that to grant such increments or not is matter of policy of the corporation and in my respectful submission, this Hon'ble Tribunal has no jurisdiction to interfere in such policy matters. Hence, present reference is required to be dismissed on this grounds only. He has further submitted that if any person or workman is having any kind of certificate at the time of interview before selection Board and if such candidate fail to show adequate performance for any reason whatsoever then in that circumstances, the selection Board will consider only performance and not that certificate. It is also possible that the candidate may possess certificate of having 80 wpm for shorthand and 30 wpm for typing words per minute, but if practice of that candidate is not continuous then naturally his performance may not meet the requirement and satisfaction of the selection board. He has further submitted the your honour may kindly have a look at the wordings of the office Order No20(22) 81 –EP dtd.15.4.1081 reproduced in the statement of claim which clearly shows that such increments will be granted based on performance before the selection board and not based on certificates. Thus, the decision of making reference is suffering from non-application of mind. No relief can be granted based on such averments made in statement of claims, because as it appears the union is under impression that the concerned workmen are entitled for such increments base on certificates. He has further submitted that the union is raising this issue afterlong lapse of time say about fourteen years. The first party saysthat there was no communication and/or demands duringthese fourteen years. The corporation has not given anypromise at any such letters/correspondence of representation along with the statement of claim. Thus, present reference is suffering from gross delay and/latches. It is also pertinent to note that it is very difficult now tosearch old documentsafter about fourteen years. Hence, the present reference is not bonafide but the same is malafide. Therefore, the said reference is required to be rejected. He has further submitted that the union has not raised any fresh demand but had only made prayer of implementation of the office order dtd. 15.4.1981, which is purely apolicy matter which is based on discretion of selection board. There is no allegation of kind of biased, discrimination, and arbitrariness against the first party. The present reference is pertaining to policy matter of the firstparty corporation and therefore the same is not maintainable at law and the same is required to be rejected. In support of the application the first party has submitted the copy of the office order No. 20(22) /81/EP dated 15.04.1981. The said order provides as under:

“ It has been decided that while calling application to the posts of steno Grade III , a provision may be made at the time of issue of an advertisement that higher remuneration would also be considered by granting suitable number of advance increments in deserving cases to the selected candidates , based on good performance in shorthand i.e. more than 80 W.P.M. and more than 30 W.P.M. in type writing speed as laid down in R & P Regulation, 1980 for the post of Steno Grade III.”

3. Since, second party has been absent since last several dates and also not filed the reply to the aforesaid application on the point of maintainability and the aforesaid office order bars the reference. Hence, reference is not maintainable and dismissed.

The reference is dismissed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 4 जुलाई, 2016

का.आ. 1390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्वामी स्टोन क्वारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1392/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-29012/119/2001-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 4th July, 2016

S.O. 1390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1392/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Swamy Stone Quarry and their workman, which was received by the Central Government on 30.06.2016.

[No. L-29012/119/2001-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 2nd February, 2016

Reference: (CGITA) No. 1392/2004

Reference: (ITC) No. 18/2002

At Chorwad Gaun,
Post Kikkakoi,
M/s. Swamy Stone Quarry,
Opp. Madal Bus Stand,
Tal KillaSongadh,
Dhuliya Rd, Dt. Surat

...First Party

Vs.

Their Workman,
Sh. Navji Dhuliya,
C/o. Surat Labour Union,
At & Post, Dr. Ambedkar Commercial Centre

111, 1st floor, Ring Rd, Man Dharwaja,
Surat(Gujarat)

... Second Party

For the First Party :

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-29012/119/2001-IR(M) dated 17.05.2002 referred the dispute for adjudication to the Industrial Tribunal, Surat (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of M/s Swamy Stone Quarry, Surat in terminating the services of ShriNavjiDhuliyaw.e.f. 19.02.2001 is legal, proper and justified? If not, to what relief the concerned workman entitled to and what other directions are necessary in the matter?”

2. This reference dates back to 17.05.2002. Both the parties were served. Second party submitted statement of claim (Ext.4) on 11.12.2002. First party has not filed his written statement. But it is unfortunate that both the parties have not been responding since 28.03.2005. Tribunal appears to be liberal in giving opportunities to the both the parties to take interest in the proceeding but to no result. Thus, it appears that both parties are not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the both parties.

The reference is dismissed in default of the both parties parties.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 4 जुलाई, 2016

का.आ. 1391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एल. आई.सी. ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 80/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-17025/1/2016-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 4th July, 2016

S.O. 1391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2012) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. L.I.C. of India and their workman, which was received by the Central Government on 30.06.2016.

[No. L-17025/1/2016-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 80/2012

Shri G.K. Nijhawan, S/o Shri C.L. Nijhawan,
R/o 14-B, Pocket F, Mayur Vihar,
Mayur Vihar, Phase II,
Delhi – 110 091

...Workman

Versus

The Senior Divisional Manager,
L.I.C. of India,
Delhi Divisional Office I,

Jeewan Prakash Building,
25, K.G. Marg,
New Delhi 110 00

...Management

AWARD

Factual matrix of the present case is that a dispute was raised under sub-section 2 of Section 2 A of the Industrial Disputes Act, 1947 (in short the Act) by Shri G.K. Nijhawan (hereinafter referred to as the claimant) averring in the statement of claim that he was appointed as Typist by Life Insurance of India (hereinafter referred to as the management) in June 1984. At the time of the incident, he was in fact working as Higher Grade Assistant (in short HGA) and was posted II branch of Delhi Divisional office, New Delhi of the management. Management has several categories of employees and there are several HGAs. However, the claimant herein was assigned job of lower cadre with ulterior motive. The claimant had an unblemished record. However, the claimant discharged the above work in the lower cadre with the assurance that he would be assigned work of HGA category later on. Management had earlier penalized the claimant herein by 'reduction of two stages in the pay scale' vide a order dated 31.03.2008. A civil suit was also filed by the claimant, which is pending in the court of Civil Judge, New Delhi.

2. According to the claimant, management pressurized him to withdraw the above civil suit and also instigated the customers to lodge false complaints against the claimant. Claimant had also informed the higher authorities about the same and had even written letter dated 23.02.2010. Claimant, in the month of February 2010 had moved an application under Right to Information Act. The above information was not furnished to the claimant and even appeal was filed by the claimant before the Central Information Commission. Management after coming to know about the second appeal filed by the claimant, issued baseless and false charge sheet dated 20.09.2010 Ex.WW1/M2 to the claimant, alleging as follows:

I. That you have been repeatedly defying office instructions, displaying insubordination and not performing office work assigned to you despite verbal warning and orders in writing. Instances in this respect are stated herein below:

- a. You refused to process revival under Policy No.115181018 favouring Ms.Manjula Subramanian Nambudiri on 23.02.2010.
- b. You refused to process revival under Policy No.114851940 favouring Shri Vikas Juyal on 24.02.2010.
- c. You refused to process change of mode under Policy No.115870942 favouring Shri Gagandeep Chatwal on 06.04.2010.
- d. You refused to process change of mode under Policy No.111817254 favouring Shri Lakhi Ram on 12.04.2010.
- e. You refused to process revival under Policy No.114841469 favouring Shri Pearl Anupama Daniel and under Policy No.114134793 favouring Shri Shashank Daniel on 12.04.2010.

II. You were assigned the job of Salary Saving Scheme, including adjustment of remittance received from P.A.s, clearance of errors etc. vide office order dated 29.04.2010 but you did not perform your duties since 29.04.2010 till date.

3. On receipt of the above charge sheet, reply was filed by the claimant on 29.09.2010 wherein claimant has denied all the material charges alleged against him and alleged that the charge sheet has been issued with a malafide view to pressurize the claimant herein to withdraw the civil suit filed against the management. Claimant has never refused to work. Management never enquired about the allegations of the claimant mentioned in his letter dated 23.02.2010 wherein the claimant had named officials who were instigating customers. The claimant was a layman and he was not informed by the Enquiry Officer regarding procedure to be followed in conduct of the above enquiry. Enquiry was conducted in complete violation of principles of natural justice and biased attitude of the management was writ large during pendency of the enquiry, inasmuch as vide order dated 01.12.2010 salary of the claimant was stopped; Management supplied copy of the findings of the Enquiry officer vide letter dated 21.04.2011 and response to the same was submitted by the claimant vide a representation dated 04.04.2011. Management did not consider the representation of the claimant and another representation was submitted on 05.05.2011. Management, with a predetermined mind, passed order of 'removal from service' on 14.05.2011 Ex.WW1/M13 against the claimant. It is the case of the claimant herein that he filed appeal under Regulation 30 of the LIC Staff Regulations 1960, which was also rejected illegally. Finally, it is prayed that order of removal dated 14.05.2011 be set aside with directions to the management to reinstate the claimant.

4. Management filed reply to the statement of claim, taking preliminary objections, inter alia the claimant not approaching the Tribunal with clean hands, suppression of facts etc. It was alleged on merits that the claimant does

not have unblemished record of service as he was earlier charge sheeted on 27.10.2007. It is also denied that the claimant was not given job of HGA. In the Establishment Manual, such duties can be assigned to the claimant and any HGA can be directed to perform duty of any nature. Said duty was assigned to the claimant vide office orders dated 04.02.2010 and 29.04.2010. Office order dated 04.02.2010 shows that the claimant had to pass revival paper for SA upto Rs.2 lakh. Scrutiny of revival papers above Rs.2 lakh is the job of HGA as per official powers as well as Standing Orders. Claimant did not perform duty of HGA as assigned to him. He did not attend to the similar job under policies No.115181018 favoring Ms. Manjula Subramanian, 114851940 favouring Vikas Juyal, 11481469 favouring Ms. Pearl Anupama etc. Job assigned to the claimant those of HGA and same was not below cadre job by any standard. It is denied that the claimant was imposed punishment of 'reduction to two sates in the timescale of pay' on 31.03.2011. Management also denied the factum of pendency of civil suit. Management also denied that no kind of pressure was put on the claimant to withdrawn the above civil suit. Management never instigated any officer or any person to file complaint against the claimant herein. Management has also denied the other averments and it is alleged that the enquiry has been conducted in accordance with law. Enquiry Officer was not at all biased nor he violated principles of natural justice. Reply is supported by affidavit.

5. Against this factual background, my learned predecessor vide a order dated 11.09.2012 framed the following issues:

- (i) Whether the enquiry conducted by the management against the claimant was violative of principles of natural justice?
- (ii) Whether punishment awarded to the claimant does not commensurate to his misconduct?
- (iii) Whether he is entitled to relief of reinstatement? If no, to what relief he is entitled.
- (iv) Relief

6. Issue No.1, which pertained to the domestic enquiry conducted against the claimant which resulted in removal of claimant from the job, was treated as preliminary issue.

7. During the course of evidence on preliminary issue, claimant tendered his affidavit in evidence, which is Ex.WW1/A and also proved documents Ex.WW1/1 to Ex.WW1/14 in support of his claim. Management to rebut the case of the claimant on the preliminary issue examined Shri Manoj Kumar Gupta and Shri Anil Kumar Arora as MW1 and MW2, who proved documents Ex.MW1/1 to Ex.MW1/11. Ex.WW1/M1 to Ex.WW1/M14 and Ex.MW2/1 & Ex.MW2/2 respectively. The Tribunal, after considering evidence on record came to the conclusion that in fact no witness was examined by the management during the course of domestic enquiry and Presenting Officer has tendered 28 documents directly before the Enquiry Officer. It was held by this Tribunal vide order dated 12.08.2013 that the enquiry was not conducted in accordance with principles of nature justice nor any document has been proved by the management as required under the law. As such, enquiry was held to be perverse and issue No.1, i.e. preliminary issue, was answered in favour of the claimant and against the management.

8. Thereafter, an application was moved by the management seeking permission to prove misconduct of the claimant on merits before this Tribunal. It transpires from the record that thereafter case was listed for evidence of the management to prove misconduct on the part of the claimant.

9. Management, in order to prove allegations contained in the charge sheet Ex.WW1/M2 examined Shri Lalit Gupta, Chief Manager at MW3, whose affidavit is Ex.MW3/A. He has also tendered in evidence documents Ex.MW3/1 to Ex.MW3/29.

10. Claimant examined himself in rebuttal and his affidavit is Ex.WW1/B and relied on documents Ex.WW1/1 to Ex.WW1/14, already proved by him.

11. I have heard Shri B.S. Rana, authorized representative for the claimant and Shri Arun Aggarwal, authorized representative for the management.

12. During the course of arguments, learned authorized representatives for the respective parties fairly agreed that after findings on domestic enquiry has been rendered by this Tribunal holding the same to be unfair and against principles of natural justice, record pertaining to the domestic enquiry would not constitute fresh evidence in terms of provisions of Section 11 A of the Act as those proceedings have already been found to be defective or unfair by the Court. Such record would also not constitute material on record within the meaning of Section 11 A of the Act and enquiry proceedings on being found to be unfair have to be ignored altogether. Thus, the only evidence to be considered by this Tribunal for the purpose of misconduct is the evidence which has been led by the parties after holding the domestic enquiry to be unfair.

13. This is in consonance with the ratio of law in *Neeta Kaplish vs. Presiding Officer Labour Court* (1999 Lab.IC445) and *Karnataka State Road Transport vs. Laxmi Narain* (2001 Lab.IC 1777).

14. Now, the Tribunal is required to evaluate the evidence adduced by the parties before this Tribunal after enquiry has been held to be invalid or unfair by the order of the learned predecessor on 12.08.2013, as discussed above. The only witness examined by the management to prove the charges against the claimant is Shri Lalit Gupta, who at the relevant time was Chief Manager. It is clear from affidavit of MW3 that it is on the same lines as the stand as has been taken in the reply to the statement of defence filed on behalf of the claimant. It is further claimed that the claimant was admittedly in the employment of the management at the relevant time and did not comply with the office order dated 04.02.2010 issued by Ms.Sudha Shrikant. It is further alleged in Para 4 of the affidavit that on 23.02.2010 that Shri Parameshwaran (husband of policy holder Manjula Subramanian) came to the office and complained about non-co-operation by the claimant herein in verifying personal statement in respect of his wife. Claimant also refused to process recovery papers under the policy. The said person filed a complaint in writing, which is Ex.MW1/5 and the status report of the policy is Ex.MW1/3. Thereafter, claimant herein was called by Shri Lalit Gupta MW3 who admitted the complaint but he refused to perform his duty even on his instructions. It is pertinent to note here that there is nothing on record to suggest that the claimant herein has admitted contents of the complaint Ex.MW1/5. This witness has further admitted in his affidavit that he ordered Shri Chanak Lal Sharma, another official of the branch to do the work of the claimant herein.

15. In Para 6 of the affidavit, there is reference to another complaint by Shri E.V. John who was harassed by the claimant herein. He has approached the claimant for revival of the lapsed policy of Shri Vikas Juyal and the complaint filed by Shri John is Ex.MW1/6. In the subsequent paras there is reference to other complaints of misbehavior of the claimant herein filed by policy holders and other persons. In a nutshell, claimant herein was not performing duties as per directions given to him by his superiors.

16. Shri Lalit Gupta, MW3 in his cross examination has admitted that the claimant has written letters Ex.WW1/3 to Ex.WW1/ as well as Ex.MW3/W1. It is further clear from the statement of this witness that claimant herein has filed replies to most of the letters/memos issued to him by the management. It is clear from perusal of Ex.WW1/3 that the claimant has specifically mentioned in letter dated 24.02.2010 about copies of the alleged complaints against him. However, he has not been supplied with the documents by the management. In another letter Ex.WW1/4 claimant has specifically mentioned that no action has been taken on his representation dated 23.02.2010. He has also mentioned that some officials of the branch are instigating policy holders/customers to lodge complaints against him but the management has not enquired about all these facts. He had also expressed apprehension so as to involve him in false complaint/case. In letter Ex.WW1/5, which is in fact in response to letter dated 07.04.2010, claimant has denied all the allegations mentioned in the said letter. Claimant has again highlighted the fact that certain officials are instigating policy holders to lodge false complaints against him. Further, in letter Ex.MW3/W1 which is in response to letter dated 12.05.2010, claimant has again clarified regarding false and baseless charges leveled against him by certain policy holders. This was being done so as to take disciplinary action against the claimant. In this reply there is also reference to the civil suit which the claimant had filed before the Civil Judge, New Delhi. In the end, request has been made to withdraw the said letters.

17. Cross examination of MW3 (27.02.2014) shows that he has not disposed of the various representations filed by the claimant herein. This witness further stated that Ms.Sudha Shrikant has informed that most of the time, claimant was sitting idle. However, management has not examined Ms.Sudha Shrikant, who was the best witness to depose regarding non-performance by the claimant. Regarding insubordination, management has not examined any other independent witness of the management. Since there were other employees working in the branch and there were several other employees who were holding the same post as that of the claimant herein, better course for the management was to have examined any one of such witness in whose presence the incidents of misconduct, misbehavior or insubordination has taken place so as to persuade this Tribunal to hold that the claimant herein is really guilty of the misconduct. It is also clear that the present enquiry was instituted on the basis of complaints filed by customers/policy holders whereas various representations filed by the workman, i.e. Ex.WW1/2, Ex.WW1/4, Ex.WW1/5, Ex.WW1/6, Ex.WW1/8 and Ex.WW1/9 were not dealt with properly by the management nor any specific order on the said representatives were passed by the management. It clearly shows that the management from the very beginning was acting in a biased manner against the claimant herein. It is also admitted fact that when the above enquiry was launched against the claimant herein, civil suit had already been filed against the management, which clearly shows that the management was not happy with the style of functioning of the claimant and was looking for appropriate opportunity so as to rope in the claimant in the enquiry. It has also come in evidence of MW3 Shri Lalit Gupta that there were several employees in the department holding similar post as that of the claimant. However order dated 04.02.2010 was specifically issued only against the claimant and not to the other employees working in the Department.

18. Shri G.K. Nijhawan has examined himself, in rebuttal, as WW1 and tendered his affidavit Ex.WW1/B. He has specifically denied that he was assigned the job of HGA. He has not lodged any protest when this job was assigned to him. It was strongly urged on behalf of the management that no merit was found in the various complaints filed by the claimant with the Chief Manager or other officials. To my mind, this argument is for the sake of argument only; when a complaint has been made in writing, it should have been disposed of by the officials of the management by passing a reasoned/speaking order, particularly when number of such representations are many and were being filed from time to time. It is really strange that serious action was taken on the complaints filed by the customers/policy holders of the management and no action has been taken on the various representations made by the claimant herein. Since there allegations of misbehavior which are vague and general in nature in most of the complaints lodged against the claimant herein, this Tribunal is of the view that atleast one or two such complainants with whom the claimant herein has misbehaved, should have been examined so as to throw better light on the incidents which had taken place at the relevant time. Since nothing of the sort was done by the management so as to prove allegations of misbehavior etc. nor there is any specific evidence regarding defiance of orders or instructions of showing insubordination by the claimant herein.

19. As such, it is held that solitary statement of Shri Lalit Gupta, MW3, Chief Manager of the Corporation is held to be not sufficient so as to prove the charges against the claimant herein.

20. It is necessary to mention that in departmental enquiry though rules of evidence and procedure of civil procedure is not strictly applicable, in case there is involvement of serious charges of misconduct with consequences as grave as dismissal/removal etc., standard of fairness and reasonableness will apply to meet ends of justice. Since alleged misconduct against the claimant, in my opinion, is required to be established by cogent and reasonable evidence of the management. Minimum requirement of rules of natural justice is that there must be satisfactory evidence on record so as to persuade this Tribunal to hold that charges stand duly established. It is no doubt true that in departmental enquiry proceedings, standards of proof is that of preponderance of probability and not proof beyond reasonable doubt as is the position in criminal cases. Yet, as discussed above, there must be adequate and sufficient evidence on record to prove the charges against the delinquent employee.

21. As a sequitur my above discussion, it is held that management has not led sufficient and adequate evidence against the claimant so as to prove charges on defence of orders as well as misbehavior with the customers/public as contained in charge sheet Ex.MW1/2. As such, Issue No.1 is held to be not established or proved against the claimant.

22. Since findings on Issue No.1 has been given in favour of the claimant, as such, Issue No.2 which pertains to award of punishment by the management does not survive for consideration. Punishment of 'Removal from Service' awarded by the management against the claimant is held to be against the law, particularly when charges against the claimant are held to be not established, the same is, hereby, set aside. Since the claimant herein has not reached the age of superannuation, as such, it is held that the workman herein is entitled to relief of reinstatement with full back wages, including all consequential benefits as if he would have been in service. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

June 21, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2016

का.आ. 1392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अक्कास मेरीटाइम एजेंसी प्रा. लिमिटेड और दूसरों के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ सं. 36/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-42011/13/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 4th July, 2016

S.O. 1392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Aqdas Maritime Agency Pvt. Ltd. And Others and their workman, which was received by the Central Government on 30.06.2016.

[No. L-42011/13/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI****Present :-** Shri Harbansh Kumar Saxena**ID No. 36/2015**

Sh. Dilip Singh S/o Sear Singh,
Through General Mazdoor Lal Jhanda Union,

B-1/A, Nathu Colony (East) , 100 Foota Road,
Delhi -110093

...Workman

Versus

1. The manager,
M/s Aqdas Maritime Agency Pvt. Ltd., 32/33,
Eastern Chamber , 4th Floor, 128/A,
Nandal Jani Marg, (Poora Street),
Mumbai-400009.
2. The Managing Director,
Central Warehousing Corporation,
4/1, Siri Fort Industrial Area,
August Kranti Marg, Hauz Khas, New Delhi-110016.
3. The Regional Manager,
Central Warehousing Corporation,
Scope Minar, First Floor, Laxmi Nagar, New Delhi-110092.
4. The Manager,
M/s Suman Forwarding Agency Pvt. Ltd.
ICD , Near Gazipur village,
Patparganj, Delhi-110096

...Management

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-42011/13/2014-IR(M) dated 12.02.2015 referred the following industrial Dispute to this Tribunal for adjudication :-

“Whether termination of Sh. Dilip Singh S/o Sh. Sear Singh, w.e.f. 3.1.2013 by the management No. 4 i.e. Suman Forwarding Agency Pvt. Ltd. without making payment of legitiment dues is just, fair and legal? If not, what relief will be given to the workman and from which date? Whether the management No. 1 & 2 i.e Central Warehousing Corporation is responsible to ensure and secure continuance of employment of Sh. Dilip Singh S/o Sh. Sear Singh in the establishment of new contractor appointed for undertaking the job of such contractor i.e. management No. 3 M/s. Aqdas maritime Agency Pvt. Ltd. If not what relief the workman concerned is entitled to ?”

On 11.03.2015 reference was received in this Tribunal. Which was register as I.D No. 36/2015 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement / Response to the reference.

In this background there is no option to this tribunal except to pass No Dispute Award because parties are not interested to file their respective pleadings.

On the basis of which none of the parte can be directed to adduce its evidence.

No Dispute Award is accordingly passed.

Dated:-15.06.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 जुलाई, 2016

का.आ. 1393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन ऑयल कारपोरेशन लिमिटेड और दूसरों के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 29/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 30.06.2016 को प्राप्त हुआ था।

[सं. एल-30012/26/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 4th July, 2016

S.O. 1393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2015) of the Central Government Industrial Tribunal/Labour Court-1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and Others and their workman, which was received by the Central Government on 30.06.2016.

[No. L-30012/26/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH**

Case No. ID No. 29 of 2015

Reference No. L-30012/26/2015-IR(M) dated 20.01.2016

Jai Shram Shakti Refinery Thekedar Workers Union,
136/4, Bishan Sawaroop Colony, Near Labour Office,
Panipat (Haryana)

... Workman

Versus

1. The Dy.General Manager (Production),
Indian Oil Corporation Ltd.,
Panipat Refinery, Bholi, Haryana-132140.
2. M/s. D.J. Construction, Village-Gandhigram,
PO-Balrangram, Distt.- Karnal (Haryana)
3. M/s. HKS Infrastructure, House No. 14,
Civil Lines-II, Subhash Marg,
Railway Road, Karnal (Haryana)-132001

... Respondents

Appearances :

For the Workman : None.
For the Management : Shri Paul S.Saini for respondent.1
None for respondent no.2&3.

AWARD

Passed on: - 06.06.2016

Government of India Ministry of Labour vide notification No. L- 30012/26/2015-IR(M) dated 20.01.2016. has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management No.3 in terminating the services of the workman engaged with the management No.2 in the establishment of management No.1 is legal and justified? If not, what relief the workman is entitled to and from which date?”

2. Today the case is fixed for filling of claim statement by the workman/union. None appeared for the workman/union nor any claim statement has been filed. Shri Paul S.Saini is present for the respondent No.1 and none is

present for the other respondents. Already three opportunities have been given to the Union to file claim statement. It appears that the Union is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh
06.06.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 41/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/61/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th July, 2016

S.O. 1394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Kanpur Kshetriya Gramin Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/61/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 41/2003

Ref.No. L-12011/61/2002-IR(B-I) dated 04.03.2003

BETWEEN

Sri Santosh Shukla, General Secretary
Kanpur Kshetriya Gramin Bank Employees Assn.
E-564, Avas Vikas Scheme No.1, Kalyanpur
Kanpur (U.P.) 208001

AND

1. The President,
Kanpur Kshetriya Gramin Bank
C-38, Sarvodaya Nagar,
Kanpur (U.P.) 208001

AWARD

1. By order No. L-41011/61/2002-IR(B-I) dated 04.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Santosh Shukla, General Secretary, General Secretary, Kanpur Kshetriya Gram Bank Employees Association, Kanpur and the President, Kanpur Kshetriya Gramin Bank, Kanpur for adjudication.

2. The reference under adjudication is:

“KYA CHAIRMAN, KANPUR KSHETRIYA GRAMIN BANK, KANPUR DWARA BANKING UDYOG ME LAGU 6TH & 7TH BIPARTITE SETTLEMENT KE ANUSAR KANPUR KSHETRIYA GRAMIN BANK KE SHAKHA OFFICES ME CHATURTH SHRENI ME KARYARARAT SABHI KARMKARO KO DATE 01.11.1992 AUR 01.12.1997 SE DAFTARI BHATTE KO PUNRIKSHIT KAR BAKAYA KA BHUGATAN NAHIN KIYA JANA NYONAOCHIT HAI? YADI NAHIN TO SAMBHANDIT KARMKAR KIS ANUTOSH KE HAQDAR HAI?”

3. As per the claim statement A1-6, the workman has stated in brief that the employees association is registered body under the Trade Union Act and it is competent to raise demand on behalf of its members, opposite party is sponsored by Bank of Baroda. The applicant has stated that the dispute has arisen between the parties over non payment of special allowances/functional allowances on the basis of 6th & 7th Bipartite settlement, its provisions are applicable on the employees of the present management as well, under the guidelines of N.I.T. Award and the Bipartite Settlement, respective unions of the employees are also covered, prior to implementation of award, before 01.09.1987, the service conditions of the employees of Kanpur Kshetriya Gramin Bank, Kanpur were governed by the Staff Regulations and their pay and allowance were at par to those of employees of State of U.P and there was huge demand by the employees of Regional Rural Banks all over the country for providing the same scale of pay equal to those employees of Sponsor Bank on the ground that they are also discharging the same duties as are being discharged by the employees of Sponsor Bank. The matter went to Hon'ble Supreme Court, a Tribunal was constituted by Govt. of India, report dated 30.04.1990 was submitted by Tribunal (N.I.T), and it was held that employees of RRB are entitled to the same pay and allowance as facilities extended to by the sponsored bank to its staff but instructions were not followed by RRBs.

4. It has further been stated that 6th & 7th Bipartite settlement were applicable w.e.f. 01.11.1992 and 01.11.1997 respectively and DA is also payable on the special allowance/functional allowance. The Govt. of India has issued various orders dated 22.02.1991, 11.04.2001, 25.04.2001 and 17.04.2002, NABARD has also issued letter dated 05.07.1991, definition of pay has also been mentioned in the claim statement. Circular issued by Central Government, Ministry of Finance has also been quoted therein. It has been alleged by the applicant that the Kanpur Kshetriya Gramin Bank had not considered genuine demand raised by the employees/union. With the aforesaid pleadings request has been made to issue direction that the Daftari allowance is functional allowance and it is part of pay and DA, and 6th & 7th Bipartite settlement be implemented with retrospective effect and arrear accrued at reasonable interest rates be paid and that the Cashier Incharge allowance be treated as functional allowance and it is part of the pay and DA, and 6th & 7th Bipartite settlement be implemented with retrospective effect and arrear accrued therein be paid including the interest at reasonable rates. The petitioner has filed certain documents.

5. The management in its written statement A2-7 has denied the main allegations leveled in the claim statement. The management has stated that the reference is misconceived and without jurisdiction in term that opposite party has no power to revise pay or allowance of the employees of RRBs, only the Central Govt. has got power to review, change and to fix pay and allowance. Central Government is essential party in the case. The reference order is vague.

6. The opposite party has stressed that the opposite party bank is RRB establishment under RRB ACT. 1976, only the Central Government has the powers to determine the pay scales etc. of the employees of RRBs in accordance with the powers under the provisions of section 17(1) of RRB Act., 1976; the service conditions mentioned in Bipartite settlements are applicable to the employees of the commercial banks only as the same have been agreed upon between the Indian Bank Association and unions of commercial banks, many other special allowance paid to the employees of the commercial bank which are not admissible to RRB employees like special allowance for telephone operator, audit clerk, punh card operator, special assistant, agriculture assistant telex operator and teller etc. Similarly the PF rules and Pension Rules for RRB employees are different from those applicable to commercial bank employees. As per the direction of Govt. of India's order dated 11.04.2001 and 17.04.2002 pay scale of employees have been implemented. But the opposite party has emphasized that employees of Kanpur Kshetriya Gramin Bank are still covered/governed by separate set of service rules than the nationalized banks. The managements of RRB are not empowered to determine the remuneration of their employees. It is the Govt. of India who has power under Section 17(1) of RRB Act. 1976.

7. The management has further pleaded that Board of Directors of Kanpur Kshetriya Gramin bank has complied with the order of Govt. of India and its action is just, legal and proper, the demand of the petitioner is neither genuine nor just, rather it is wrong, baseless and misconceived. The management has requested to adjudicate the award in favour of the management. Along with written statement several annexures have been enclosed.

8. The workman has filed 13 documents as per list C-9.

9. While strongly denying the pleas taken in the written statement the petitioner reiterated the facts mentioned in the claim statement and filed rejoinder A1-13.

10. On behalf of the petitioner, evidence of Sri Santosh Shukla was recorded and he was cross examined on behalf of the management. Affidavit of Sri A. K. Bajpai was filed by the management, he had been duly cross examined on behalf of the workman. Copy of memorandum of 7th Bipartite settlement has also been filed.

11. For the last several years none has been appearing in the court on behalf of the workman. Several dates were given by my learned predecessor and by me as well. Notices through Registered post, were also issued to the workman Union. It was pointed out that perhaps the effected employees are not interested to further proceed with the case, and the grievances might have also been resolved.

12. In such circumstances the arguments advanced on behalf of the management were heard at length. Record was perused thoroughly.

13. The main grievance of the petitioners is that the Bipartite settlements are not followed by the opposite party/ management and the Daftari allowance as functional allowance etc. is not being paid neither it is treated as part of the pay. The management has strongly denied this allegation.

14. The workman witness Sri Santosh Shukla in his cross examination before this court has admitted that U/S 17 of RRB Act, 1976 only the Govt. of India is empowered for pay determination, for fixation of allowance and revision etc. He has also admitted that in furtherance of NIT award, Central Govt. has issued directions dated 22.02.1991 to all the RRBs for revision of pay and allowances, and the Bipartite settlement was also implemented, later on in compliance of the directions given by Hon'ble Supreme Court, the Govt. of India has issued guidelines for implementation of 6 & 7th Bipartite Settlement, it has been made applicable in the RRBs since 01.04.2000. The witness has also admitted his union or bank was not party in the 6th & 7th Bipartite Settlement.

15. Sri A. K. Bajpai, Officer of Kanpur RRB has filed affidavit in support of written statement. Copy of Gazette of Govt. of India dated 31.03.2008 has also been referred during the argument.

16. It is crystal clear that the management of RRB is not independently authorized to fix the pay and allowances payable to its employees; rather it is monitored and regulated as per the directions of the Govt. of India. Since it is financial matter having impact on the State Ex-Chequer, therefore, different RRBs functioning in the country can not be legitimately permitted to issue any directions regarding disbursement of salary or allowances, inconsistent with the guidelines or in the absence of any fresh directions issued by the Govt. of India.

17. Therefore, the relief sought by the petitioner regarding sanction of the Daftari allowance and functional allowance to be treated as part of pay, is misconceived and can not be adjudicated. It has also not been proved that 6 & 7th Bipartite Settlement has never been unlawfully violated by the management. The workman is not entitled to any relief.

18. Award accordingly.

13.06.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 46/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/64/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th July, 2016

S.O. 1395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Kanpur Kshetriya Gramin Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/64/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT :**

RAKESH KUMAR, Presiding Officer

I.D. No. 46/2003

Ref.No. L-12011/64/2002-IR(B-I) dated 28.03.2003

BETWEEN :

Sri Santosh Shukla, General Secretary.
 Kanpur Kshetriya Gramin Bank Employees Assn.
 E-564, Avas Vikas Scheme No.1, Kalyanpur
 Kanpur (U.P.) 208001

AND

1. The President,
 Kanpur Kshetriya Gramin Bank
 C-38, Sarvodaya Nagar,
 Kanpur (U.P.) 208001

AWARD

1 By order No. L-12011/64/2002-IR(B-I) dated 28.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Santosh Shukla, General Secretary, General Secretary, Kanpur Kshetriya Gram Bank Employees Association, Kanpur and the President, Kanpur Kshetriya Gramin Bank, Kanpur for adjudication.

2. The reference under adjudication is:

“KYA CHAIRMAN, KANPUR KSHETRIYA GRAMIN BANK, KANPUR DWARA BANKING UDYOG ME LAGU BIPARTITE SETTLEMENT KE ANUSAR KANPUR KSHETRIYA GRAMIN BANK ME IS KARYA ME KARYARAT KARMKARO KO COMPUTER OPERATING ALLOWANCE KA BHUGATAN NAHIN KIYA JANA NYONAOCHIT HAI? YADI NAHIN TO SAMBHANDIT KARMKAR KIS ANUTOSH KE HAQDAR HAI?”

3. As per the claim statement A1-5, the workman has stated in brief that the employees association is registered body under the Trade Union Act and it is competent to raise demand of behalf of his members, opposite party is sponsored by Bank of Baroda. The applicant has stated that the dispute has arisen between the parties over non payment of special allowances/functional allowances on the basis of 6th & 7th Bipartite settlement, its provisions are applicable on the employees of the present management as well, under the guidelines of N.I.T. Award and the Bipartite Settlement, respective unions of the employees are also covered, prior to implementation of award, before 01.09.1987, the service condition of the employee of Kanpur Kshetriya Gramin Bank, Kanpur were governed by the Staff Regulations and their pay and allowance were at par to those of employees of State of U.P and as a result huge demand by the employees of Regional Rural Banks all over the country for providing the same scale of pay equal to those employees of Sponsor Bank on the ground that they are also discharging the same duties as are being discharged by the employees of Sponsor Bank. The matter went to Hon'ble Supreme Court a Tribunal was constituted by Govt. of India dated 30.04.1990 was submitted by Tribunal (N.I.T), and it was held that employees of RRB are entitled to the same pay and allowance and facilities extended to by the sponsored bank to its staff but instructions were not followed by RRBs.

4. It has further been stated that 6th & 7th Bipartite settlement were applicable w.e.f. 01.11.1992 and 01.11.1997 respectively and DA is also payable on the special allowance/functional allowance. The Govt. of India has issued various orders dated 22.02.1991, 11.04.2001, 25.04.2001 and 17.04.2002, NABARD has also issued letter dated 05.07.1991, definition of pay has also been mentioned in the claim statement. Circular issued by Central Government, Ministry of Finance has also quoted therein. It has been alleged by the applicant that the Kanpur Kshetriya Gramin Bank had not considered genuine demand raised by the employees/union. With the aforesaid pleadings request has been made to issue direction for payment of Computer Operator @ Rs.633 + DA per month to the employees working on Computer as Computer Operator w.e.f. the date of installation of Computers and to make payment for the arrears alongwith interest.

5. The management in its written statement A2-6 has denied the main allegations leveled in the claim statement. The management has stated that the reference is misconceived and without jurisdiction in term that opposite party has no power to revise pay or allowance of the employees of RRBs only the Central Govt. to power to review and change and fix of pay and allowance. Central Government is essential party in the case. The reference order is vague,

6. The opposite party has stressed that the opposite party bank is RRB establishment under RRB ACT. 1976 only the Central Government have the powers to determine the pay scales etc. of the employees of RRBs in accordance with the powers under the provisions of section 17(1) of RRB Act., 1976 the service conditions mentioned in Bipartite settlements are applicable to the employees of the commercial banks only as the same have been agreed upon between the Indian Bank Association and unions of commercial banks, many other special allowance paid to the employees of the commercial bank which are not admissible to RRB employees like special allowance for telephone operator, audit clerk, punch card operator, special assistant, agriculture assistant telex operator and teller etc. Similarly the PF rules and pension rules for RRB employees are different from those applicable to commercial bank employees. As per the direction of Govt. of India order dated 11.04.2001 and 17.04.2002 pay scale of employees has been implemented. But the opposite party has emphasized that employees of Kanpur Kshetriya Gramin Bank are still covered governed by separate set of service rules than the nationalized banks. The management of RRB are not empowered to determine the remuneration of their employees. It is the Govt. of India who has power under Section 17(1) of RRB Act. 1976.

7. The management has further pleaded that Board of Directors of Kanpur Kshetriya Gramin bank has complied with the order of Govt. of India and its action is just legal and proper, the demand of the petitioner is neither genuine nor just, rather it is wrong baseless and misconceived. The management has submitted that housing loan is part of the pay scale nor part of the allowance union has not approached to Govt. of India/NABARD/Sponsored bank in this matter.

8. The workman filed certain documents as per list C-9.

9. It is well settled principle of law that the onus to prove the version raised in the petition in order to seek favourable adjudication of the relief sought, lies on the petitioner himself. In this case sufficient opportunity was provided to the petitioner, during the last 13 years, yet oral evidence/affidavit, in support of the claim statement has not been filed, thereby no opportunity could be provided to the management to cross examine the petitioner.

10. There are hundreds of RRBs through out the country, if complete autonomy regarding sanction of pay scale and allowances is provided to each and every RRB, without following any uniformity in the guidelines, it may cause financial anarchy, huge discrimination and burden also on the State Exchequer itself. Undoubtly, as per the pronouncement of the Hon'ble Supreme Court also, RRBs have to follow the guidelines issued by the Govt. of India, so far as the pay scale and admissibility of allowance-payment to the bank employees is concerned. There is nothing on record which shows that the aforesaid Bipartite Settlements have been ignored by the opposite party/management.

11. After having heard the arguments advanced before me and gone through the record minutely, it is inferred that there is no iota of evidence to substantiate the pleadings of the claim statement. There is no justification for sanction of the Computer Allowance as claimed in the petition. Therefore, there was no illegality or impropriety on the part of the management, in not sanctioning the computer operator allowance as claimed herein above. The petitioner is not entitled to any relief.

12. Award accordingly.

13.06.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 32/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/60/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th July, 2016

S.O. 1396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Kanpur Kshetriya Gramin Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/60/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****PRESENT :**

RAKESH KUMAR, Presiding Officer

I.D. No. 32/2003

Ref.No. L-12011/60/2002-IR(B-I) dated 05.03.2003

BETWEEN :

Sri Santosh Shukla, General Secretary,
Kanpur Kshetriya Gramin Bank Employees Assn.
E-564, Avas Vikas Scheme No.1, Kalyanpur
Kanpur (U.P.) 208001

AND

1. The President,
Kanpur Kshetriya Gramin Bank
C-38, Sarvodaya Nagar,
Kanpur (U.P.) 208001

AWARD

1. By order No. L-41011/35/2011-IR(B-I) dated 27.07.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Santosh Shukla, General Secretary, General Secretary, Kanpur Kshetriya Gramin Bank Employees Association, Kanpur and the President, Kanpur Kshetriya Gramin Bank, Kanpur for adjudication.

2. The reference under adjudication is:

“KYA CHAIRMAN, KANPUR KSHETRIYA GRAMIN BANK, KANPUR DWARA BANKING UDYOG ME LAGU 6TH & 7TH BIPARTITE SETTLEMENT KE ANUSAR KANPUR KSHETRIYA GRAMIN BANK KE SHAKHA OFFICES ME ROKARH (JOINT CUSTODIAN) KA KARYA KARNE WALE KARMKARO KO DATE 01.11.1992 AUR 01.12.1997 SE CASHIER INCHARGE ALLOWEANCES KO REVISED(PUNRIKSHIT) KAR BAKAYA KA BHUGATAN NAHIN KIYA JANA NYONAOCHIT HAI? YADI NAHIN TO SAMBHANDIT KARMKAR KIS ANUTOSH KE HAQDAR HAI?”

3. As per the claim statement A1-6, the workman has stated in brief that the employee's association is registered body under the Trade Union Act and it is competent to raise demand on behalf of his members, opposite party is sponsored by Bank of Baroda. The applicant has stated that the dispute has arisen between the parties over non payment of special allowances/functional allowances on the basis of 6th & 7th Bipartite settlement, its provisions are applicable on the employees of the present management as well, under the guidelines of N.I.T. Award and the Bipartite Settlement, respective unions of the employees are also covered, prior to implementation of award, before 01.09.1987, the service conditions of the employees of Kanpur Kshetriya Gramin Bank, Kanpur were governed by the Staff Regulations and their pay and allowance were at par to those of employees of State of U.P and as a result huge demand was raised by the employees of Regional Rural Banks all over the country for providing the same scale of pay equal to those employees of Sponsor Bank on the ground that they are also discharging the same duties as are being discharged by the employees of Sponsor Bank. The matter went to Hon'ble Supreme Court, a Tribunal was constituted by Govt. of India, award dated 30.04.1990 was submitted by the Tribunal (N.I.T), and it was held that employees of RRB are entitled to the same pay and allowance and facilities extended to by the sponsored bank to its staff but those instructions were not followed by RRBs.

4. It has further been stated that 6th & 7th Bipartite settlement were applicable w.e.f. 01.11.1992 and 01.11.1997 respectively and DA is also payable on the special allowance/functional allowance. The Govt. of India has issued various orders dated 22.02.1991, 11.04.2001, 25.04.2001 and 17.04.2002, NABARD has also issued letter dated 05.07.1991, definition of pay has also been mentioned in the claim statement. Circular issued by Central Government, Ministry of Finance has also been quoted therein. It has been alleged by the applicant that the Kanpur Kshetriya Gramin Bank had not considered genuine demand raised by the employees/union. With the aforesaid pleadings request has been made to issue direction that the Cashier Incharge allowance be treated as functional allowance and it is part of the pay and DA, and 6th & 7th Bipartite settlement be implemented with retrospective effect and arrear accrued therein be paid including the interest at reasonable rates.
5. The management in its written statement A2-7 has denied the main allegations leveled in the claim statement. The management has stated that the reference is misconceived and without jurisdiction, and the opposite party has no power to revise pay or allowance of the employees of RRBs', only the Central Govt. has got power to review, change and fix the pay and allowance. Central Government is essential party in the case. The reference order is vague.
6. The opposite party has stressed that the opposite party bank is RRB establishment under RRB ACT. 1976 only the Central Government has the powers to determine the pay scales etc. of the employees of RRBs in accordance with the powers under the provisions of section 17(1) of RRB Act., 1976 the service conditions mentioned in Bipartite settlements are applicable to the employees of the commercial banks only as the same have been agreed upon between the Indian Bank Association and Unions of Commercial Banks, many other special allowances are paid to the employees of the commercial bank which are not admissible to RRB employees like special allowance for telephone operator, audit clerk, punch card operator, special assistant, agriculture assistant, telex operator and teller etc. Similarly the PF Rules and Pension Rules for RRB employees are different from those applicable to commercial bank employees. As per the direction of Govt. of India order dated 11.04.2001 and 17.04.2002, pay scale of employees has been implemented. But the opposite party has emphasized that employees of Kanpur Kshetriya Gramin Bank are still governed by separate set of service rules than the Nationalized Banks. The managements of RRBs are not empowered to determine the remuneration of their employees. It is the Govt. of India who has power under Section 17(1) of RRB Act. 1976.
7. The management has further pleaded that Board of Directors of Kanpur Kshetriya Gramin bank has complied with the order of Govt. of India and its action is just, legal and proper, the demand of the petitioner is neither genuine nor just, rather it is wrong, baseless and misconceived. The management has requested to adjudicate the award in its favour. Alongwith the written statement several annexures have been enclosed.
8. The workman has filed 13 documents as per list C-9.
9. While strongly denying the pleas taken in the written statement the petitioner reiterated the facts mentioned in the claim statement and filed rejoinder A1-13.
10. On behalf of the petitioner, evidence of Sri Santosh Shukla was recorded and he was cross examined on behalf of the management. Affidavit of Sri A.K. Bajpai was filed by the management. Copy of memorandum of 7th Bipartite settlement has also been filed.
11. For the last several years none has been appearing in the Court on behalf of the workman. Several dates were given by my learned predecessor and by me as well. Notices through Registered Post, were also issued to the workman union. It was pointed out that perhaps the effected employees are not interested to further proceed with the case and the grievances might have also been resolved.
12. In such circumstances the arguments advanced on behalf of the management were heard at length. Record was perused thoroughly.
13. The main grievance of the petitioners is that the guidelines of Bipartite settlement are not followed by the opposite party/ management and the Cashier Incharge is not being paid properly and functional allowance etc. is not paid by the opposite party. The management has strongly denied this allegation.
14. The petitioner's witness Sri Santosh Shukla in his cross examination, before this Court has admitted that the Chairman of the RRBs has got no authority for pay fixation, or for its revision and payment of allowances etc, he has also asserted that as per the directions of Govt. of India, Sponsored Bank issues orders for revision of pay and allowances etc., as provided under the RRB Act.
15. Sri A.K. Bajpai, Officer of Kanpur RRB has filed affidavit in support of written statement, copy of Gazette of Govt. of India dated 31.03.2008 has also been referred during the argument.
16. It is crystal clear that the management of RRB is not independently authorized to fix the pay and allowances payable to its employees; rather it is monitored and regulated as per the directions of the Govt. of India. Since it is financial matter having impact on the State Ex-Chequer, therefore, different RRBs functioning in the country can not

be legitimately permitted to issue any directions regarding disbursement of salary or allowances, inconsistent with the guidelines or in the absence of any fresh directions issued by the Govt. of India.

17. Therefore, the relief sought by the petitioner regarding sanction of revised pay and allowances to the employees, is misconceived and can not be adjudicated. It has also not been proved that the 6th & 7th Bipartite Settlement has ever been unlawfully violated by the management. The petitioner is not entitled to any relief.

18. Award accordingly.

13.06.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 45/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/62/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th July, 2016

S.O. 1397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Kanpur Kshetriya Gramin Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/62/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 45/2003

Ref.No. L-12011/62/2002-IR(B-I) dated 28.03.2003

BETWEEN :

Sri Santosh Shukla, General Secretary,
Kanpur Kshetriya Gramin Bank Employees Assn.
E-564, Avas Vikas Scheme No.1, Kalyanpur
Kanpur (U.P.) 208001

AND

1. The President,
Kanpur Kshetriya Gramin Bank
C-38, Sarvodaya Nagar,
Kanpur (U.P.) 208001

AWARD

1. By order No. L-12011/62/2002-IR(B-I) dated 28.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Santosh Shukla, General Secretary, General Secretary, Kanpur Kshetriya Gram Bank Employees Association, Kanpur and the President, Kanpur Kshetriya Gramin Bank, Kanpur for adjudication.

2. The reference under adjudication is:

“CHAIRMAN, KANPUR KSHETRIYA GRAMIN BANK, KANPUR DWARA KANPUR KSHETRIYA GRAMIN BANK ME KARYARAT KARMKARO KO BANKING UDYOG ME LAGOO 7TH BIPARTITE SETTLEMENT SAMJOHETE KE ANUSAR INCODER OPERATING ALLOWANCE KA BHUGTAN NAHIN KIYA JANA NYOCHIT HAI? YADI NAHIN TO SAMBDHANDIT KARMKAR KIS ANUTOSH KE HAQDAR HAIN”?

3. As per the claim statement A1-5, the workman has stated in brief that the employees association is registered body under the Trade Union Act and it is competent to raise demand of behalf of his members, opposite party is sponsored by Bank of Baroda. The applicant has stated that the dispute has arisen between the parties over non payment of special allowances/functional allowances on the basis of 6th & 7th Bipartite settlement, its provisions are applicable on the employees of the present management as well, under the guidelines of N.I.T. Award and the Bipartite Settlement, respective unions of the employees are also covered, prior to implementation of award, before 01.09.1987, the service condition of the employee of Kanpur Kshetriya Gramin Bank, Kanpur were governed by the Staff Regulations and their pay and allowance were at par to those of employees of State of U.P and as a result huge demand by the employees of Regional Rural Banks all over the country for providing the same scale of pay equal to those employees of Sponsor Bank on the ground that they are also discharging the same duties as are being discharged by the employees of Sponsor Bank. The matter went to Hon'ble Supreme Court a Tribunal was constituted by Govt. of India dated 30.04.1990 was submitted by Tribunal (N.I.T), and it was held that employees of RRB are entitled to the same pay and allowance and facilities extended to by the sponsored bank to its staff but instructions were not followed by RRBs.

4. It has further been stated that 6th & 7th Bipartite settlement were applicable w.e.f. 01.11.1992 and 01.11.1997 respectively and DA is also payable on the special allowance/functional allowance. The Govt. of India has issued various orders dated 22.02.1991, 11.04.2001, 25.04.2001 and 17.04.2002, NABARD has also issued letter dated 05.07.1991, definition of pay has also been mentioned in the claim statement. Circular issued by Central Government, Ministry of Finance has also quoted therein. It has been alleged by the applicant that the Kanpur Kshetriya Gramin Bank had not considered genuine demand raised by the employees/union. With the aforesaid pleadings request has been made to issue directions to the bank to make payment of incoder operator @ Rs.378/- + DA per month to the employees working on encorder machine w.e.f. the date of installation of encorder machine and also make payment of arrear along with interest.

5. The management in its written statement A2-6 has denied the main allegations leveled in the claim statement. The management has stated that the reference is misconceived and without jurisdiction in term that opposite party has no power to revise pay or allowance of the employees of RRBs only the Central Govt. to power to review and change and fix of pay and allowance. Central Government is essential party in the case. The reference order is vague. The Gazette of India dated 31.03.2008 has also been filed by the learned AR of the management.

6. The opposite party has stressed that the opposite party bank is RRB establishment under RRB ACT. 1976 only the Central Government have the powers to determine the pay scales etc. of the employees of RRBs in accordance with the powers under the provisions of section 17(1) of RRB Act., 1976 the service conditions mentioned in Bipartite settlements are applicable to the employees of the commercial banks only as the same have been agreed upon between the Indian Bank Association and unions of commercial banks, many other special allowance paid to the employees of the commercial bank which are not admissible to RRB employees like special allowance for telephone operator, audit clerk, punch card operator, special assistant, agriculture assistant telex operator and teller etc. Similarly the PF Rules and Pension Rules for RRB employees are different from those applicable to commercial bank employees. As per the direction of Govt. of India order dated 11.04.2001 and 17.04.2002 pay scale of employees has been implemented. But the opposite party has emphasized that employees of Kanpur Kshetriya Gramin Bank are still covered governed by separate set of service rules than the nationalized banks. The management of RRB are not empowered to determine the remuneration of their employees. It is the Govt. of India who has power under Section 17(1) of RRB Act. 1976.

7. The management has further pleaded that Board of Directors of Kanpur Kshetriya Gramin bank has complied with the order of Govt. of India and its action is just legal and proper, the demand of the petitioner is neither genuine nor just, rather it is wrong baseless and misconceived. The management has submitted that housing loan is not part of the pay scale nor part of the allowance union has not approached to Govt. of India/NABARD/Sponsored bank in this matter.

8. The workman filed certain documents as per list C-9.

9. While strongly denying the pleas taken in the written statement the petitioner reiterated the facts mentioned in the claim statement and filed rejoinder A1-13.

10. on behalf of the workman. Copy of memorandum of 7th Bipartite settlement is also been filed.

11. For the last several years none has been appearing in the court on behalf of the workman. Several dates were given by my learned predecessor and by me as well. Notices through Registered post, were also issued to the workman union. It was pointed out that perhaps the effected employees might not be interested to further proceed with the case and the grievances might have also been resolved.

12. In such circumstances the arguments advanced on behalf of the management were heard at length. Record was perused thoroughly.

13. Despite sufficient opportunity being given to the workman evidence was not filed on behalf of the workman therefore in such circumstances the management also did not file any affidavit/evidence.

14. It is well settled principle of law that the onus to prove the version raised in the petition in order to seek favourable adjudication of the relief sought, lies on the petitioner himself. In the case no provide sufficient opportunity to the petitioner, during the last 13 years, yet oral evidence/affidavit, in support of the claim statement has not been filed, thereby no opportunity could be provided to the management to cross examine the petitioner.

15. There are hundreds of RRBs through out the country, if complete autonomy regarding sanction of pay scale and allowances is provided to each and every RRB, without following any uniformity guidelines, it may cause financial anarchy, huge discrimination and burden on the State Exchequer itself. Undoubtly, as per the pronouncement of the Hon'ble Supreme Court also, RRB have to follow the guidelines issued by the Govt. of India,sofar as the pay scale and admissibility of allowance payment to the bank employees is concerned. There is nothing on record which shows that the aforesaid Bipartite Settlement have been ignored by the opposite party/management.

16. After having heard argument advanced before me and perusal of the record minutely, it is inferred that there is no iota of evidence to substantiate the pleadings of the claim statement and there is no justification in sanctioning incoder operator allowance to the aforesaid employees as claimed herein above. Therefore, there was no illegality or impropriety on the part of the management in not sanctioning the said encoder operating allowance, neither there was any unlawful violation of the referred Bipartite Settlement on the part of the management. The petitioner is not entitled to relief.

17. Award accordingly.

13.06.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कानपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 33/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12011/59/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th July, 2016

S.O. 1398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Kanpur Kshetriya Gramin Bank and their workmen, received by the Central Government on 27.06.2016.

[No. L-12011/59/2002-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

RAKESH KUMAR, Presiding Officer

I.D. No. 33/2003

Ref.No. L-12011/59/2002-IR(B-I) dated 05.03.2003

BETWEEN :

Sri Santosh Shukla, General Secretary,
Kanpur Kshetriya Gramin Bank Employees Assn.
E-564, Avas Vikas Scheme No.1, Kalyanpur
Kanpur (U.P.) 208001

AND

1. The President,
Kanpur Kshetriya Gramin Bank
C-38, Sarvodaya Nagar,
Kanpur (U.P.) 208001

AWARD

1. By order No. L-12011/59/2002-IR(B-I) dated 05.03.2003 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Santosh Shukla, General Secretary, General Secretary, Kanpur Kshetriya Gramin Bank Employees Association, Kanpur and the President, Kanpur Kshetriya Gramin Bank, Kanpur for adjudication.

2. The reference under adjudication is:

“KYA CHAIRMAN, KANPUR KSHETRIYA GRAMIN BANK, KANPUR DWARA KANPUR KSHETRIYA GRAMIN BANK ME KARYARAT KARMKARO KO DEY GRAH RIN (HOUSING LOAN) SEEMA ME PRYOJIT BANK KE BHATI BADOTHARI NAHIN KARNA NYONAOCHIT HAI? YADI NAHIN TO SAMBHANDIT KARMKAR KIS ANUTOSH KE HAQDAR HAI?”

3. As per the claim statement A1-6, the workman has stated in brief that the employees association is registered body under the Trade Union Act and it is competent to raise demand on behalf of its members, opposite party is sponsored by Bank of Baroda. The applicant has stated that the dispute has arisen between the parties over non payment of special allowances/functional allowances on the basis of 6th & 7th Bipartite settlement, its provisions are applicable on the employees of the present management as well, under the guidelines of N.I.T. Award and the Bipartite Settlement, respective unions of the employees are also covered, prior to implementation of award, before 01.09.1987, the service conditions of the employees of Kanpur Kshetriya Gramin Bank, Kanpur were governed by the Staff Regulations and their pay and allowance were at par to those of employees of State of U.P and there was huge demand by the employees of Regional Rural Banks all over the country for providing the same scale of pay equal to those employees of Sponsor Bank on the ground that they are also discharging the same duties as are being discharged by the employees of Sponsor Bank. The matter went to Hon'ble Supreme Court a Tribunal, was constituted by Govt. of India, report dated 30.04.1990 was submitted by Tribunal (N.I.T), and it was held that employees of RRB are entitled to the same pay and allowance as facilities extended to by the sponsored bank to its staff but instructions were not followed by RRBs.

4. It has further been stated that 6th & 7th Bipartite settlement were applicable w.e.f. 01.11.1992 and 01.11.1997 respectively and DA is also payable on the special allowance/functional allowance. The Govt. of India has issued various orders dated 22.02.1991, 11.04.2001, 25.04.2001 and 17.04.2002, NABARD has also issued letter dated 05.07.1991, definition of pay has also been mentioned in the claim statement. Circular issued by Central Government, Ministry of Finance has also been quoted therein. It has been alleged by the applicant that the Kanpur Kshetriya Gramin Bank had not considered genuine demand raised by the employees/union. With the aforesaid pleadings request has been made to issue direction that same facilities towards housing loan be provided to the members of the Union which has been extended to the employees of the sponsor bank.

5. The management in its written statement A2-12 has denied the main allegations leveled in the claim statement. The management has stated that the reference is misconceived and without jurisdiction in term that opposite party has no power to revise pay or allowance of the employees of RRBs, only the Central Govt. has got power to review, change and to fix pay and allowance. Central Government is essential party in the case. The reference order is vague.

6. The opposite party has stressed that the opposite party bank is RRB establishment under RRB ACT. 1976, only the Central Government has the powers to determine the pay scales etc. of the employees of RRBs in accordance with the powers under the provisions of section 17(1) of RRB Act., 1976, the service conditions mentioned in Bipartite settlements are applicable to the employees of the commercial banks only as the same have been agreed upon between the Indian Bank Association and unions of commercial banks, many other special allowance paid to the employees of the commercial bank which are not admissible to RRB employees like special allowance for telephone operator, audit clerk, punch card operator, special assistant, agriculture assistant telex operator and teller etc. Similarly the PF rules and

Pension Rules for RRB employees are different from those applicable to commercial bank employees. As per the direction of Govt. of India order dated 11.04.2001 and 17.04.2002 pay scale of employees has been implemented. But the opposite party has emphasized that employees of Kanpur Kshetriya Gramin Bank are still covered governed by separate set of service rules than the nationalized banks. The managements of RRB are not empowered to determine the remuneration of their employees. It is the Govt. of India who has power under Section 17(1) of RRB Act. 1976.

7. The management has further pleaded that Board of Directors of Kanpur Kshetriya Gramin bank has complied with the order of Govt. of India and its action is just, legal and proper, the demand of the petitioner is neither genuine nor just, rather it is wrong, baseless and misconceived. The management has submitted that housing loan is not part of the pay scale nor part of the allowance; Union has not approached the Govt. of India/NABARD/Sponsored bank in this matter. The opposite party has requested to adjudicate in its favour. Several documents have been filed by the opposite party.

8. The workman has filed 13 documents as per list C-8.

9. While strongly denying the pleas taken in the written statement the petitioner reiterated the facts mentioned in the claim statement and filed rejoinder A1-17.

10. On behalf of the petitioner, evidence of Sri Santosh Shukla was recorded and he was cross examined on behalf of the management. Affidavit of Sri A.K. Bajpai has been filed by the management; he had been duly cross examined on behalf of the workman. Copy of memorandum of 7th Bipartite settlement has also been filed.

11. For the last several years none has been appearing in the court on behalf of the workman. Several dates were given by my learned predecessor and by me as well. Notices through Registered post, were also issued to the workman union. It was pointed out that perhaps the effected employees are not interested to further proceed with the case and the grievances might have also been resolved.

12. In such circumstances the arguments advanced on behalf of the management were heard at length. Record was perused thoroughly.

13. The main grievance of the petitioners is that the Bipartite settlement was not followed by the opposite party management and the facilities regarding house loan are not being provided to the employees of the opposite party bank as are being extended to the employees of the sponsor bank. The management has strongly denied this allegation.

14. The petitioner witness, in his cross examination before this court has admitted that he does not know whether any directions have been issued by the Central Government to enhance the house loan, neither he was aware whether any authorization/direction issued by Central Govt. is required for providing parity regarding the house loan facilities or not. He has also shown his ignorance about facts regarding enhancing housing loan in pursuance of the orders issued by the Central Government.

15. It is crystal clear that the management of RRB is not independently authorized to fix the pay and allowances payable to its employees; rather it is monitored and regulated as per directions of the Govt. of India. Since it is financial matter having impact on the State Exchequer, therefore, different RRBs functioning in the country can not be legitimately permitted to issue any directions regarding disbursement of salary or allowances, inconsistent with the guidelines or in the absence of any fresh directions issued by the Govt. of India.

16. Therefore, the relief sought by the petitioner regarding sanction of housing loan facility in parity with that extended to the employees of the sponsored bank is misconceived and can not be adjudicated. It has also not been proved by the petitioner that 6 & 7th Bipartite settlement has ever been violated unlawfully by the management. The petitioner is not entitled to any relief.

17. Award accordingly.

13.06.2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 जुलाई, 2016

का.आ. 1399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 114/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 27.06.2016 को प्राप्त हुआ था।

[सं. एल-12025/01/2016-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th July, 2016

S.O. 1399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 27.06.2016.

[No. L-12025/01/2016-IR (B-I)]

RANBIR SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD**

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 7th day of June, 2016

INDUSTRIAL DISPUTE L.C. No. 114/2005

Between:

Sri Rajender Kumar,
S/o R. Srisailam,
C/o A.P. Industrial Employees Union,
“House of Labour”,
King Kothi Road,
Hyderabad – 29

...Petitioner

AND

1. The Dy. General Manager,
Personnel Department,
State Bank of Hyderabad,
Gunfoundry Head Office,
Hyderabad.
2. The Branch Manager,
State Bank of Hyderabad,
Kakatiyanagar Branch,
Toolchi Chowki, Hyderabad

...Respondents

Appearances:

For the Petitioner : M/s. V. Viswanatham & R. Dushyantala, Advocates

For the Respondent : Sri P.A.V. Bala Prasad, Advocate

AWARD

Sri Rajender Kumar, who worked under the Respondent State Bank of Hyderabad (who will be referred to as workman) has filed this petition against the Respondents seeking to declare the oral termination order dated 4.10.2005 issued by the Respondents as illegal, arbitrary and to set aside the same consequently directing the Respondent to reinstate the Petitioner workman into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deem fit.

2. The averments made in the petition in brief are as follows:

The Petitioner workman was appointed as a casual labourer by the first Respondent in the month of August, 1990 and posted under the 2nd Respondent. The Petitioner worked continuously under the 2nd Respondent without any break, and completed more than 240 days in a calendar year. He was paid Rs.50/- per day, which was less in comparison with the payment made to others. It is stated that even if Respondent No.2 was making payment of Rs.130/- per day to other workmen and was also making arrear payment to others, the Petitioner was not given such payment. Even if the Petitioner requested Respondent No.2 to increase his payment, Respondent No.2 assured him to increase his payment and also assured him for regularization of his service. The Petitioner has completed 15 years of service successfully under the Respondents, but his pay was not increased. The 2nd Respondent used to extract work from the Petitioner from 10AM to 11.30 PM in a day without any break to help and assist him, when the systems become failure. It is also stated that when the service of the Petitioner was not regularized the Petitioner approached

his union. Thereafter, his union raised a dispute under Sec.2K of the Industrial Disputes Act, 1947 before the Conciliation Officer cum Assistant Labour Commissioner, Circle No.I (C), who in turn fixed a date for conciliation with the Respondents. But Respondent No.2 without considering any aspect of the Labour Law, orally terminated the Petitioner from service on 4.10.2005. It is further stated that before illegal and oral termination, no memo or charge sheet was served on the Petitioner nor any enquiry was conducted by the Respondent, even though the Hon'ble High Court of A.P., have decided a case observing that, the casual labourers covered by the definition of workman under Sec.2(s) of the Act (2001-LLR-178). It is also submitted that the order of oral termination becomes illegal and inoperative as the Respondents failed to follow the provisions of Sec.25-F of the Industrial Disputes Act, 1947 and as such the Petitioner is entitled for reinstatement. After illegal oral termination, the Petitioner's union made a strong protest to the Respondents as well as to the officials of the Labour Department by filing a demand notice dated 4.10.2005. The Petitioner after his illegal oral termination made all the efforts to seek alternative employment, but in spite of all the efforts he could not be able to get any employment and still he is jobless. In the above circumstances, the Petitioner filed this case to pass an award directing the Respondents to reinstate the Petitioner in the service in a regular basis from 4.10.2005 with full back wages and all other attendant benefits with continuity of service and also pass order for payment of 12% interest and back wages and costs.

3. **The Respondents filed counter denying the averments in brief as follows:**

The claim petition filed by the Petitioner under Sec.2A(2) of the Industrial Disputes Act, 1947 is not maintainable in law or in facts. It is stated that Andhra Pradesh Industrial Employees Union does not have any Locus standi to file the case on behalf of the Petitioner as it is neither an association recognized by the Bank nor having the employees of the Bank as members of the said union. More over the Petitioner is not a workman as per Industrial Disputes Act, 1947 and also the members of the union are not the employees of the bank, as such the petition filed by the Petitioner is liable to be dismissed. It is also stated that the Petitioner was engaged by Kakatiyanagar Branch on daily casual basis as and when work arose in the bank due to various reasons. He was engaged on his personal request to the Branch Manager, offering his services for that day and rendering his service, the Petitioner was paid as per the understanding for the work done. It is submitted that the Petitioner was never engaged by the Respondents on regular basis and the Petitioner was never appointed by the bank in any regular vacancy and no appointment letter had been issued to him or any employment was offered to him and for doing any regular work bank recruits staff by complying with the provisions stipulated, after taking into account the guidelines issued by the Government of India from time to time in accordance with the provisions laid down by the Government. Further the engagement made out by the Petitioner on daily wages/casual nature as and when work arose, was not according to extant rules/norms for recruitment and as such the employment itself is illegal and the claim for higher wages based on the work said to have been done earlier by paying the difference of wages, is not maintainable in the eye of law. It is further submitted that the Petitioner never worked for more than 240 days in a calendar year and on comparison with the other workers working in other branches is not a right to the Petitioner, and the payments made to the respective workers have arisen in that specific cases and specific circumstances based on court orders. It is also submitted that the documents relied on by the Petitioner are self-serving documents and it's impact can not be looked into as it is not official records of the bank and mode and manner in which the documents have been obtained is not made out by the Petitioner. The notice given, stating that the Respondents terminated the Petitioner on 4.10.2005 is concerned, is nothing but an after thought with a mind set for filing the present case as the Respondents have stated earlier in the counter that the Petitioner was engaged on casual basis as and when need arose for particular work on a particular day. It is further submitted that the Petitioner is not entitled for any claims as per Sec.25(F) of the Industrial Disputes Act, 1947. As the Petitioner is not a permanent employee and the claim that the Petitioner continued in the service from August, 1990 to 4.10.2005 and he was terminated on 4.10.2005 is far from truth as the Petitioner was engaged on casual basis as and when need arose with particular work on a particular day. The claim for termination of service on 4.10.2005 and the claim for harassment for which the Petitioner approached the court is far from truth, but it is an attempt to abuse true process of law. The Petitioner is required to prove strictly that he has not sought alternative employment elsewhere and with the above averments, the Respondents submitted for dismissal of the claim petition with exemplary costs.

4. During the course of hearing of the case the Petitioner has been examined himself as WW1, and also proved the documents as Ex.W1 to W17. The Respondent bank also examined one Mohd. Ismail, as MW1 and not filed any documents in support of their claim.

5. I have already heard the Learned Counsels for both the sides. The Learned Counsel for the Petitioner has submitted one written notes of arguments which has been considered.

6. As per the pleadings of both the parties, the following issues are to be considered,

- I. Whether the action of the management of State Bank of Hyderabad, Kakatiyanagar Branch in terminating the services of Sri M. Nageswara Rao orally w.e.f. 4.10.2005 is legal and justified?
- II. If not, to what relief the Petitioner is entitled for?

7. The Learned Counsel for the Petitioner contended that Respondent No.1 appointed the Petitioner workman as casual labourer in the month of August, 1990 but he was allowed to work under Respondent No.2. The Petitioner worked under Respondent No.2 continuously without any break and has completed more than 240 days in a calendar year. During the time of his work the Petitioner was given Rs.50/- per day which was less in comparison with the payment made to other workers. On many occasions Respondent No.2 was making payment of Rs.130/- per day to other workers and was also making arrear payment to others. But the Petitioner was not given any such payment. Even the Petitioner has requested Respondent No.2 to enhance his pay and to regularize him into service, Respondent No.2 has assured the Petitioner to increase his pay and to regularize him into service but no action was taken by the Respondents. The Learned Counsel also contended that the Petitioner has already completed 15 years of continuous service under the Respondents but his pay was not increased. When the services of the Petitioner was not regularized the Petitioner approached his union for regularization of his service. The union of the Petitioner also made several representations to the conciliation officer, i.e., the Assistant Labour Commissioner, Circle-I (C) who also tried his level best to impress upon the Respondents, but Respondent No.2 without considering the future aspect of the Petitioner terminated him from service w.e.f. 4.10.2005. The termination of the Petitioner is totally illegal. Before termination neither any notice nor any charge sheet was issued on the Petitioner nor any enquiry was conducted by the Respondents. The Respondents are supposed to follow the procedure contained under Sec.25F of the Industrial Disputes Act, 1947, before termination of the Petitioner from service. Since the date of termination the Petitioner is jobless and is sitting idle without any employment. The termination of the Petitioner is illegal and violative of the provisions of Industrial Disputes Act, 1947. Under the above circumstances, the Respondents be directed to reinstate the Petitioner in service on a regular basis from 4.10.2005 with full back wages and all other attendant benefits.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent bank contended that the Petitioner is not a workman as per the Industrial Disputes Act, 1947. The Petitioner was employed by Kakatiyanagar Branch on daily casual basis as and when work arose in the bank. He was engaged by the Branch Manager at his personal request offering his services for that day and for rendering his service, the Petitioner was paid as per the understanding for the work done by him. The Petitioner was never engaged by the Respondents on regular basis and the Respondents bank has never appointed the Petitioner in any post against any regular post and no appointment letter had been issued to the Petitioner or any employment was offered to him. For doing any regular work bank recruits staff by complying the provisions stipulated after taking into account the guidelines issued by the Government of India from time to time in accordance with the rules framed by the Government of India. The engagement of the Petitioner under the Respondents' bank was only on daily wage basis and casual in nature. The claim of the Petitioner is totally false and frivolous. The Petitioner has never worked for more than 240 days in a calendar year. The Respondents have never assured the Petitioner to enhance his pay and for regularization of his service. The documents relied on by the Petitioner have been prepared by him for the purpose of this case. The so called date of termination on 4.10.2005 is nothing but purely after thought with a mind set for filing of the present case. The Learned Counsel for the Respondents also submitted that no appointment letter has been given to the Petitioner. The Petitioner has not been engaged following due procedure and his engagement was not like sanctioned posts. When no appointment was made, the question of termination of the Petitioner does not arise and does not confer any right on the Petitioner to be regularized. The Petitioner has not produced any documents to show that he had been appointed by the Respondents bank against any sanctioned post, in accordance with the rules and within the statutory rules. If original appointment was not made following due procedure of selection as envisaged by the guidelines of the bank, the Petitioner can not seek regularization. The Petitioner was a mere casual worker. The Apex Court in the case of Secretary of State Government of Karnataka vs. Umadevi and Others, have settled the principles of law, that, no casual worker should be regularized by the courts or the State Government and as per the constitutional provisions all the citizens of this country have right to contest for the employment and temporary or casual workers have no right to seek for regularization. In para(47) of the judgement, the Apex Court held that,

“47. when a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person can not invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and incases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

In para (53) of Umadevi's case, it was held that,

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (1967) 1 South Central Railway 128, R.N. Nanjundappa (1972) 1 SCC 409 and B.N. Nagarajan (1979) 4 SCC 507 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of Tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgement. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

9. He further contended that the Petitioner worked as one casual worker only for some years, and not against any sanctioned post. It can be noted that even the benefit of Para 53 stated above can not be extended to the Petitioner. It is further contended that in the case of *Satya Prakash & Others Vs. State of Bihar & Others (2010) 4 SCC 179*, the Apex Court held that,

"7. We are of the view that the appellants are not entitled to get the benefit of regularization of their services since they were never appointed in any sanctioned posts. The appellants were only engaged on daily wages in the Bihar Intermediate Education Council."

8. In Umadevi(3) case (2006) 4 SCC 1, this court held that the courts are not expected to issue any direction for absorption/regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees. This Court held that such directions issued could not be said to be inconsistent with the constitutional scheme of public employment. This Court held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. In view of the law laid down by this Court, the directions sought for by the appellants cannot be granted."

10. As per his contention the Petitioner who was engaged on daily wage basis will not get any right or claim for a permanent job in view of the judgement reported in 2006(4) at page 197 decided in the case of *Secretary, State Government of Karnataka Vs. Umadevi and others*, and further pointed out that every workman has to be recruited as per the established procedure and rules and further contended that under whom the workman was working at the time of need was transferred from the post for which the Petitioner was discharged and he does not have any vested right to be regularized against any regular post and as such the Petitioner is not entitled to get any relief.

11. It is to be seen whether the Petitioner is entitled to get any temporary status in view of the regularization of the casual labour (grant of temporary status and regularization) Scheme, 1989. According to the said scheme temporary status would be conferred on the casual labourers employed as and on 7.11.1989 and who had rendered a continuous service of atleast one year. Out of this, they must have been engaged on work for a period of 240 days. Admittedly, the Petitioner has joined in service in the month of August, 1990. No doubt, this scheme is only applicable to full time casual labourers. As per the evidence of the Petitioner, he has been working sincerely and honestly, under Respondent No.2 for a period of 15 years and his application for appointment in the subordinate cadre of consolidated wages or on part time scale have been forwarded and recommended by the 2nd Respondent on several times i.e., on 7.7.1995, 10.2.1997, 23.4.1997, 24.1.1999, 16.2.2000, 17.5.2001 and 4.4.2003. Though the Respondents have not disclosed the above facts; the Petitioner has filed the copies of the form of applications for appointment in the bank's subordinate cadre i.e., Peon, along with the list of documents. Though the copies of the above letters have not been admitted into evidence, but the copies of letters dated 7.7.1995, available in the case record clearly indicates that the Branch Manager, Respondent No.2 has forwarded the application of the Petitioner to the Regional Manager, Zonal Office, Secunderabad for favourable consideration stating that the Petitioner belongs to an economically backward and poor family, which indicates that the Petitioner was working sincerely under Respondent No.2 prior to the year 1995. Similarly the pass book, vide Ex.W15 relied on by the Petitioner clearly indicates that Petitioner was paid Rs.50/- per day from 29.4.2004 till 3.9.2005. The Respondents have not disputed the payment of such wages to the Petitioner. This also indicates that the Petitioner has worked for more than 240 days in a year. The total number of days from his

initial appointment, i.e., from the month of August, 1990 till 3.9.2005, though have not been calculated, but it shows that the Petitioner was working under the Respondents for 240 days per a year as a casual labour @ Rs.50/- per day. The Respondents have not disputed the documents relied on by the Petitioner. The Petitioner has made representation to the Assistant Labour Commissioner (C) through the President of his Union to refer the matter to the Respondents and after receipt of such letter the Respondents have also made a reply to the Assistant Labour Commissioner (C), who had fixed a date of hearing of the dispute to 14.10.2005 directing the Petitioner to work under the Respondents. But when the President of the Union made a representation to the Respondents, they replied through a letter to the President of the Petitioner's union stating that the bank will submit its submissions before the Assistant Labour Commissioner (C), and when the Petitioner attended to the bank they did not allow him to join, which clearly shows that the Respondent bank has not given any opportunity to the Petitioner to put forth his grievance before them. The documents relied on behalf of the Petitioner clearly shows that the Petitioner has worked for more than 15 years continuously as a casual labour and he comes under the definition of 'workman' under the Industrial Disputes Act, 1947. When the Petitioner was retrenched from service the Respondents are expected to retrench the workman as per the procedure prescribed under Sec.25F of the Industrial Disputes Act, 1947. But the Respondents did not serve any notice of retrenchment to the Petitioner. Therefore, the termination or retrenchment of the Petitioner from service is in violation of Sec.25F of the Industrial Disputes Act, 1947. Since the Respondents have not given one month notice, in writing, indicating the reasons for retrenchment, and further the Petitioner was not paid one month's pay in lieu of notice and was not paid the retrenchment compensation after 15 days i.e., compensation at the rate of one month pay for every completed year of service, the retrenchment of the Petitioner from his service is illegal.

Result:

In view of the discussion made above, the questions are answered as under:

"I hold that the termination of the services of the Petitioner Sri R. Rajender Kumar w.e.f. 4.10.2005 is illegal and not justified and Respondents are directed to reinstate the Petitioner without back wages. Further directed that the Respondents should consider the Petitioner for conversion into full time casual labour under the relevant scheme and rules. The Respondents are at liberty to retrench the Petitioner only by following the due procedure laid down for retrenchment under the Industrial Disputes Act, 1947."

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 7th day of June, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

WW1: Sri R. Rajender Kumar

Witnesses examined for the Respondent

MW1: Sri Mohd. Ismail

Documents marked for the Petitioner

- Ex.W1 : Office copy of the petition u/s 2(k) of the Industrial Disputes Act, 1947 before ALC(C), dt.1.9.2005
- Ex.W2 : Notice of conciliation from ALC(C) dt. 23.9.2005
- Ex.W3 : Office copy of representation of President APIEU dt. 4.10.2005
- Ex.W4 : Postal receipts dt. 4.10.2005
- Ex.W5 : Postal acknowledgements dt. 6.10.2005
- Ex.W6 : Office copy of representation dt. 17.10.2005
- Ex.W7 : Postal receipt dt. 17.10.2005
- Ex.W8 : Postal acknowledgements dt. 19.10.2005
- Ex.W9 : Copy of representation dt. 17.10.2005
- Ex.W10 : Lr. from Respondent dt. 24.10.2005
- Ex.W11 : Copy of representation dt. 26.10.2005 to the Respondent
- Ex.W12 : Lr. of Respondent to ALC(C) dt. 9.11.2005
- Ex.W13 : Minutes of conciliation proceedings dt. 29.12.2005
- Ex.W14 : Lr. No.7(20)/2005-E2 dt. 24.1.2006 by ALC(C) to M/o L&E, N.Delhi

Ex.W15	:	Pass book
Ex.W16	:	Photostat copy of Ir. No.F/DGM/PER/152 dt. 4.6.97 of Respondent
Ex.W17	:	Identity Card

Documents marked for the Respondent

NIL

नई दिल्ली, 24 जून, 2016

का.आ. 1400.—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए स्टील अथॉरिटी ऑफ इंडिया का मिश्र धातु इस्पात संयंत्र, दुर्गापुर के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, 08 जुलाई, 2016 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात्:-

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;
- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसुविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं;
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई सामाजिक सुरक्षा अधिकारी या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
 - (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ; अथवा
 - (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
 - (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
 - (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा:-
 - (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है ; अथवा

- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या
- (ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या
- (घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;
- (ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।
6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/16/2013-एस.एस.-I]

अजय मलिक, अवर सचिव

New Delhi, the 24th June, 2016

S.O. 1400.—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of **Alloy Steel Plant of SAIL, Durgapur** from the operation of the said Act. The exemption shall be effective w.e.f. 08.07.2016 for a period of one year.

2. The above exemption is subject to the following conditions namely:-

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period), such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any Social Security Officer appointed by the Corporation under Sub-Section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-
 - (i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or
 - (ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

- (a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or
 - (b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or
 - (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee ; or
 - (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,
 - (e) exercise such other powers as may be prescribed.
- (6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/16/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 28 जून, 2016

का.आ. 1401.—राष्ट्रपति, श्री सत्य पूत मेहरोत्रा, पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, मुम्बई-I को दिनांक 02.06.2016 से 16.10.2016 तक की अवधि अथवा इस पद के नियमित आधार पर भरे जाने तक का अथवा अगले आदेशों तक, इनमें जो भी पहले हो, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय कोलकाता के पीठासीन अधिकारी का अतिरिक्त प्रभार सौंपते हैं।

[सं. ए-11016/03/2009-सीएलएस-II]

एस. के. सिंह, अवर सचिव

New Delhi, the 28th June, 2016

S.O. 1401.—The President is pleased to entrust the additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, **Kolkata** to Justice Shri Satya Poot Mehrotra, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Mumbai-I with effect from 02.06.2016 for a period upto 16.10.2016 or till the post is filled on regular basis or until further orders, whichever is the earliest.

[No. A-11016/03/2009-CLS-II]

S. K. SINGH, Under Secy.